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MONTANA LEGISLATIVE HISTORY

Chapter 204 ~~SB~~ 2003

Bill H 373 S _____ Original bill & history ✓ C

H. Committee on Federal Relations			S. Committee on Natural Resources		
Hearing Date(s)	1-27	C	Hearing Date(s)	3-17	EA C
	2-10	EA C			C
		C			C
		C			C
Date Out		C		rpt 3-18	
	rpt 2-11				

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/20	FISCAL NOTE REQUESTED		
1/20	REFERRED TO TRANSPORTATION		
1/24	FISCAL NOTE RECEIVED		
1/25	FISCAL NOTE PRINTED		
1/27	HEARING		
2/04	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	11	2
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	78	22
2/10	3RD READING PASSED	77	21
	TRANSMITTED TO SENATE		
2/24	REFERRED TO HIGHWAYS AND TRANSPORTATION		
3/18	HEARING		
4/03	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	12	0
4/03	COMMITTEE REPORT—BILL CONCURRED		
4/03	REREFERRED TO FINANCE AND CLAIMS		
4/09	INDEFINITELY POSTPONED IN COMMITTEE		
	DIED IN STANDING COMMITTEE		

HB 370 INTRODUCED BY NOENNIG *LC0851 DRAFTER: VANDENBOSCH*

REVISE MINOR SUBDIVISION LAWS

1/20	INTRODUCED		
1/20	REFERRED TO NATURAL RESOURCES		
2/03	HEARING		
2/20	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	12	6
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	76	22
2/26	3RD READING PASSED	81	18
	TRANSMITTED TO SENATE		
2/27	REFERRED TO NATURAL RESOURCES		
3/14	HEARING		
3/19	INDEFINITELY POSTPONED IN COMMITTEE		
	DIED IN STANDING COMMITTEE		

HB 371 INTRODUCED BY BALYEAT *LC0983 DRAFTER: PETESCH*

ALLOW PROPORTIONAL REPRESENTATION BASED ON PARTY ON INTERIM COMMITTEES

1/20	INTRODUCED		
1/20	REFERRED TO STATE ADMINISTRATION		
2/04	HEARING		
2/05	TABLED IN COMMITTEE		
2/28	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		

HB 372 INTRODUCED BY CYR *LC1946 DRAFTER: STERNBERG*

FIX OPENING DAY FOR HUNTING SEASON AS A SATURDAY

1/20	INTRODUCED		
1/20	REFERRED TO FISH, WILDLIFE AND PARKS		
2/04	HEARING		
2/07	COMMITTEE EXECUTIVE ACTION—BILL PASSED	18	2
2/08	COMMITTEE REPORT—BILL PASSED		
2/12	2ND READING PASSED	88	9
2/13	3RD READING PASSED	88	9
	TRANSMITTED TO SENATE		
2/24	REFERRED TO FISH AND GAME		
3/20	HEARING		
3/26	INDEFINITELY POSTPONED IN COMMITTEE		
	DIED IN STANDING COMMITTEE		

HB 373 INTRODUCED BY A. OLSON *LC0618 DRAFTER: EVERTS*

REVISE STRIP AND UNDERGROUND MINE RECLAMATION ACT

1/20	INTRODUCED		
1/20	FISCAL NOTE REQUESTED		
1/20	REFERRED TO FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS		
1/27	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/27	HEARING		
2/10	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	9	5
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		

2/15	2ND READING PASSED	65	35
2/17	3RD READING PASSED	64	32
	TRANSMITTED TO SENATE		
2/24	REFERRED TO NATURAL RESOURCES		
3/17	HEARING		
3/18	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	10	2
3/18	COMMITTEE REPORT—BILL CONCURRED		
3/19	2ND READING CONCURRED	33	16
3/20	3RD READING CONCURRED	33	17
	RETURNED TO HOUSE		
3/21	SENT TO ENROLLING		
3/22	RETURNED FROM ENROLLING		
3/22	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
4/02	SIGNED BY GOVERNOR		
4/02	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 204		
	EFFECTIVE DATE: 1/01/2004 - ALL SECTIONS		

HB 374 INTRODUCED BY GIBSON *LC1316 DRAFTER: C. ERICKSON*

REVISE RESIDENCY LAW FOR SCHOOL ENROLLMENT PURPOSES

1/21	INTRODUCED		
1/21	REFERRED TO EDUCATION		
1/27	HEARING		
2/07	TABLED IN COMMITTEE		
2/28	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		

HB 375 INTRODUCED BY MATTHEWS *LC0731 DRAFTER: HEFFELFINGER*

REVISE TEACHERS RETIREMENT LAWS-RETURN TO WORK

11/13	FISCAL NOTE NEEDED		
1/21	FISCAL NOTE REQUESTED		
1/21	INTRODUCED		
1/21	REFERRED TO STATE ADMINISTRATION		
1/27	FISCAL NOTE RECEIVED		
1/28	FISCAL NOTE PRINTED		
2/03	HEARING		
2/03	TABLED IN COMMITTEE		
2/28	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		

HB 376 INTRODUCED BY B. OLSON *LC1982 DRAFTER: C. ERICKSON*

PERMISSIVE LEVIES IN COUNTIES WITH INSTITUTIONS OF HIGHER EDUCATION

1/09	FISCAL NOTE NEEDED		
1/21	FISCAL NOTE REQUESTED		
1/21	INTRODUCED		
1/21	REFERRED TO TAXATION		
1/24	HEARING		
1/24	FISCAL NOTE RECEIVED		
1/29	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	14	4
1/30	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/03	REVISED FISCAL NOTE REQUESTED		
2/07	REVISED FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
3/05	2ND READING NOT PASSED	34	66
4/03	MISSED DEADLINE FOR REVENUE BILL TRANSMITTAL		

HB 377 INTRODUCED BY C. YOUNKIN *LC1333 DRAFTER: PETESCH*

ISSUE BONDS FOR HYDROGEN FUTURES PARK AND TECHNOLOGY PROJECTS

1/21	FISCAL NOTE REQUESTED		
1/21	INTRODUCED		
1/21	REFERRED TO FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS		
1/28	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
2/03	HEARING		
2/06	COMMITTEE EXECUTIVE ACTION—BILL PASSED	12	2
2/07	COMMITTEE REPORT—BILL PASSED		
2/12	TAKEN FROM 2ND READING; REREFERRED TO APPROPRIATIONS	100	0

HOUSE BILL NO. 373

INTRODUCED BY A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION LAWS; CLARIFYING THE POLICY AND FINDINGS; CLARIFYING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO APPROVE OR DISAPPROVE MINOR REVISIONS; MODIFYING PERMIT APPLICATION REQUIREMENTS; CLARIFYING HYDROLOGIC BALANCE RECLAMATION REQUIREMENTS; MODIFYING AREA MINING REQUIREMENTS; MODIFYING THE REQUIREMENTS FOR PLANTING VEGETATION FOLLOWING GRADING OF A DISTURBED AREA; PROVIDING STANDARDS FOR SUCCESSFUL REVEGETATION; CLARIFYING THAT VEGETATION THAT IS PLACED OR SEEDED BECOMES THE PROPERTY OF THE LANDOWNER AFTER THE BOND IS RELEASED; ALLOWING REVISION OF PERMIT AND RECLAMATION PLAN APPLICATIONS IN ORDER TO INCORPORATE THE PROVISIONS OF THIS ACT; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-221, 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, 82-4-235, AND 82-4-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-202, MCA, is amended to read:

"82-4-202. Policy -- findings. (1) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards

~~,~~ especially as to reclamation of disturbed lands~~,~~ in order to achieve ~~the aforementioned~~ those objectives; and

(g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~ ensure the wise use of these resources and prevent the failure to conserve coal.

(2) The legislature ~~hereby~~ finds and declares that:

(a) in order to achieve the ~~aforementioned~~ policy objectives enumerated in subsection (1), promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ ensure a long-range dependable tax base, it is reasonably necessary to require~~, after March 16, 1973,~~ that all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted, that ~~no~~ a permit may not be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, that certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly appears in the remaining provisions of this part, and that the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part ~~be deemed to be~~ is an exercise of the authority granted in the Montana constitution~~, as adopted June 6, 1972,~~ and, in particular, a response to the mandate expressed in Article IX ~~thereof~~ of the constitution and ~~also be deemed to be~~ that this part is also an exercise of the general police power to provide for the health and welfare of the people~~.~~;

(c) coal mining alters the character of soils and overburden materials and that duplication of premining topography, soils, and vegetation is not practicable;

(d) the standard for successful reclamation of lands mined for coal is the reestablishment of sustainable land use comparable to premining conditions or to higher or better uses; and

(e) standards for successful reclamation must be well-defined, consistent, and attainable so that mine operators can reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved."

Section 2. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

~~(2)~~(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion~~,~~ and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area;

(d) elimination of all highwalls, spoil piles, and depressions does not mean that spoil from the first cut must be transported to the last cut if highwalls are eliminated and box cut spoils are graded to blend in with the surrounding terrain; and

(e) the reclaimed surface configuration is appropriate for the postmining land use.

~~(3)~~(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

~~(4)~~(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

~~(5)~~(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

~~(6)~~(8) "Board" means the board of environmental review provided for in 2-15-3502.

~~(7)~~(9) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(8)~~(10) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(9)~~(11) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

~~(10)~~(12) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance ~~is~~ are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(13) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(11)~~(14) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(12)~~(15) "Department" means the department of environmental quality provided for in 2-15-3501.

(16) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(17) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(13)~~(18) "Failure to conserve coal" means the nonremoval or ~~nonutilization~~ nonuse of minable and marketable coal by an operation. However, the nonremoval or ~~nonutilization~~ nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(14)~~(19) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(20) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(21) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(22) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(23) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(24) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage as they relate to uses of land and water within the area affected by mining and the adjacent area.

~~(15)~~(25) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that

could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(26) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(27) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(28) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, residential, or undeveloped land.

~~(16)~~(29) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(30) "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

~~(17)~~(31) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is

controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(18)~~(32) "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(19)~~(33) "Mineral" means coal and uranium.

~~(20)~~(34) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(21)~~(35) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

~~(22)~~(36) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(37) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(38) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(23)~~(39) "Person" means a person, partnership, corporation, association, or

other legal entity or any political subdivision or agency of the state or federal government.

~~(24)~~(40) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(25)~~(41) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(26)~~(42) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work ~~to restore an area of land~~ conducted on lands affected by strip mining or underground mining ~~under a plan approved by the department~~ to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

(43) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less-intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

(44) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(27)~~(45) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional

mineral from existing gob or tailings piles).

(46) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(47) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(28)~~(48) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(29)~~(49) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(30)~~(50) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface ~~and whose principal place of residence is on the land~~;

(b) ~~a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations~~ a purchaser of equitable title to the land surface under a contract for deed; or

(c) the state of Montana when the state owns the surface.

~~(31)~~(51) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(32)~~(52) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

(53) "Undeveloped land" means land that:

(a) has no current use or is not currently being managed; or

(b) if previously developed, has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

~~(33)~~(54) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(34)~~(55) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(56) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(35)~~(57) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 3. Section 82-4-221, MCA, is amended to read:

"82-4-221. Mining permit required. (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit

designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at the time the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of each permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person must be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision must be approved or disapproved within a reasonable time, depending on the scope and complexity, but ~~in no case longer than 120 days~~ within 60 days, which may be extended by an additional 30 days by mutual agreement of the department and the applicant. Applications for major revisions are subject to all the permit application requirements and procedures."

Section 4. Section 82-4-222, MCA, is amended to read:

"**82-4-222. Permit application.** (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and ~~state~~ provide:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known,

whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or ~~his~~ the applicant's agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other

excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of ~~his~~ the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area;

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

~~(n)~~(q) a coal conservation plan; and

~~(o)~~(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by two copies of all maps meeting the requirements of subsections (2)(a) through ~~(2)(n)~~ (2)(q). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all

locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy~~,~~ or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of ~~his~~ the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur."

Section 5. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the

application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-208(4)(b), the department shall prepare written

findings granting or denying the permit or major revision application in whole or in part ~~no~~ not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in ~~associated offsite~~ adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or

underground-coal-mining operations and during reclamation as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; ~~and~~

(vii) designing and constructing reclaimed channels of intermittent streams and

perennial streams to ensure long-term stability; and

~~(vii)~~(viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct

the strip- or underground-mining operation in a manner that protects areas outside the permit area."

Section 6. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required -- bond -- alternative plan. (1) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. ~~All highwalls must be reduced and the steepest slope of the reduced highwall may be no greater than 20 degrees from the horizontal. Highwall reduction must be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading must eliminate all highwalls and spoil peaks.~~ The area of land affected must be ~~restored~~ backfilled and graded to the approximate original contour of the land. However:

(a) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to develop a postmining landscape that will provide greater moisture retention, greater stability, reduced soil losses from runoff and erosion, and enhanced options for higher or better uses;

(b) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(c) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by board rules; and

(d) reclaimed topography must be suitable for the approved postmining land use.

(e) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff. ~~Additional restoration work may be required by the department according to rules adopted by the board.~~

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose

of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall

reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if ~~no~~ a public hearing is not held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days after the hearing.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the bond

or deposit has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. ~~No~~ Any part of the bond or deposit may not be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the

department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for the hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

~~(7)~~(8) An operator may propose and the department may approve higher or better uses as alternative postmining land uses, after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed land use meets all of the following criteria:

(a) There is a reasonable likelihood for achievement of the alternate land use.

(b) The alternate land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(c) The alternate land use will not:

(i) be impractical or unreasonable;

(ii) be inconsistent with applicable land use policies or plans;

(iii) involve unreasonable delay in implementation; or

(iv) cause or contribute to violation of federal, state, or local law. ~~alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans must be submitted to the department, and after consultation with the landowner, if the plans are approved by the department and complied with within the time limits determined by the department as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the department. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(l).~~

~~(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be used and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation at a minimum to:~~

~~(a) restore the land affected to a condition capable of supporting the use that it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not determined to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not~~

~~involve unreasonable delay in implementation, and would not violate federal, state, or local law; and~~

~~(b) prevent soil erosion to the extent achieved prior to mining.~~

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Section 7. Section 82-4-233, MCA, is amended to read:

"82-4-233. Planting of vegetation following grading of disturbed area. (1) ~~Except as provided in subsection (4), after the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant the legumes, grasses, shrubs, and trees that are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:~~

~~(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;~~

~~(b) regenerating under the natural conditions prevailing at the site, including~~

~~occasional drought, heavy snowfalls, and strong winds; and~~

~~(c) preventing soil erosion to the extent achieved prior to the operation.~~ The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(a) diverse, effective, and permanent;

(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;

(c) at least equal in extent of cover to the natural vegetation of the area; and

(d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.

(2) ~~The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover must be defined by rules of the board.~~ The reestablished plant species must:

(a) be compatible with the approved postmining land use;

(b) have the same seasonal growth characteristics as the original vegetation;

(c) be capable of self-regeneration and plant succession;

(d) be compatible with the plant and animal species of the area; and

(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.

(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:

(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;

(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates.

~~(3)~~(4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).

~~(4)~~(5) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department ~~pursuant to subsection (2)~~ and on which the reclaimed vegetation otherwise meets the requirements of ~~subsection~~ subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."

Section 8. Section 82-4-234, MCA, is amended to read:

"**82-4-234. Commencement of reclamation.** The operator shall commence the reclamation of the area of land affected by ~~his~~ the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans ~~shall~~ must be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. ~~A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233.~~"

Section 9. Section 82-4-235, MCA, is amended to read:

"**82-4-235. ~~Inspection of vegetation~~ Determination of successful revegetation -- final bond release.** (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least

equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is diverse if multiple plant species meeting the requirements of 82-4-233(1)(b) are present. The department may approve a lesser diversity standard for postmining land uses other than grazing land.

(e) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(f) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(g) plant species comprising the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area, are introduced species that have become naturalized, or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation ~~for permanent diverse~~ of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory ~~permanent diverse~~ vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be

released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

~~(2)~~(3) (a) Notwithstanding the provision in subsection ~~(1)~~ (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of ~~82-4-232(8)~~ 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection ~~(2)(a)~~ (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection ~~(1)~~ (2)."

Section 10. Section 82-4-236, MCA, is amended to read:

"82-4-236. Vegetation as property of landowner. All ~~legumes, grasses, shrubs, and trees~~ vegetation ~~which are~~ that is planted or seeded on the area of land affected as required by this part or rules adopted under this part ~~become~~ becomes the property of the landowner after complete release of the bond, unless the operator and the

landowner agree otherwise."

NEW SECTION. **Section 11. Permit and reclamation plan application revisions.** (1) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on [the effective date of this act], in order to incorporate the provisions of this part.

(2) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before [the effective date of this act]. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

NEW SECTION. **Section 12. Codification instruction.** [Section 11] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 11].

NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Contingent voidness.** (1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

NEW SECTION. **Section 16. Effective date.** [This act] is effective January 1, 2004.

- END -

FISCAL NOTE

Bill #: HB0373 **Title:** Revise strip and underground mine reclamation act

Primary Sponsor: Olson, A **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:	$0	$0
Revenue:	$0	$0
Net Impact on General Fund Balance:	$0	$0

☐ Significant Local Gov. Impact	☐ Technical Concerns
☐ Included in the Executive Budget	☐ Significant Long-Term Impacts
☐ Dedicated Revenue Form Attached	☐ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Department of Environmental Quality

1. HB 373 would affect DEQ's coal regulatory program involving post mining land use and revegetation, and shorten maximum review time for minor revision applications from 120 days to 60 days (plus an additional 30 with concurrence from the operator).
2. The changes involving post mining land use and revegetation would allow operators to submit revisions to their reclamation plans that incorporate statutory changes in these areas. To the extent that operators exercise these options, it will result in additional permit revision processing by the coal program, including review and revision of previous EISs and EAs that were written on currently-approved reclamation plans. Depending on the time required for this additional permit processing and the priorities established for these projects, other responsibilities that the coal program must meet could be delayed and other services that it provides could be delayed or canceled, given an unchanged level of staff and operational funding.
3. The proposed change of maximum review time for minor revision applications would also have an effect on the coal program for some large minor revision applications that have historically taken longer than 60 days to review due to their complexity and the multiple subject areas involved. The shortening of review time for such large and complex revision applications could result in a delay in meeting other responsibilities or delay or cancellation of other services provided by the coal program, given an unchanged level of staff and operational funding.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROD BITNEY**, on January 27, 2003 at 3:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Eileen J. Carney (D)
Rep. Hal Jacobson (D)
Rep. Scott Mendenhall (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)

Members Excused: None.

Members Absent: Rep. Tim Dowell (D)
Rep. Daniel Fuchs (R)
Rep. Jeff Laszloffy (R)
Rep. Jim Shockley (R)

Note: Absent members arrived after the role was called.
Rep. Brown left prior to the role call vote.

Staff Present: Glenna McClure, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 373, 1/20/2003
Executive Action: HB 266; HB 27; HJ 11

HEARING ON HB 373

Sponsor: REPRESENTATIVE ALAN OLSON, HD 8, ROUNDUP

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 2.6 - 6}

REP. OLSON said that, in the late 1970's, Montana amended the Reclamation Act in an attempt to incorporate provisions of their original Reclamation Act. Mining companies were required to put up bonds to cover the costs of reclamation. Now, 25 years later, there is still reclaimed land still under bonds held by DEQ (Department of Environmental Quality). The land is not exactly as it was prior to mining, and thus, does not meet the criteria for bond release. HB 373 removes the allowance for subjectivity in returning the land to exactly as it was prior to mining. The bill allows for the land to be returned to a land-use standard of as good, or better, than it was prior to mining. The Colstrip area is an example of how the utility company has done a good job of reclamation in acre after acre of land. HB 373 does not allow coal companies to escape their liability to return land to as good, or better, condition as pre-mining. This bill provides for clear and understandable standards for success.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 6 - 28.1}

David Simpson, Montana Coal Council, provided a copy of his testimony. He also distributed a pamphlet, "A Land Reborn."

EXHIBIT(feh17a01)
EXHIBIT(feh17a02)

Pat Campbell, Operating Engineers, Local #400, said that he supports HB 373. It will provide for mining that is environmentally sound. If we don't help the coal companies, there won't be any coal companies.

Jim Mockler, Montana Coal Council, said that he was in support of HB 373.

Tom Harrison, Spring Creek Coal, said that this matter has been pending since 1973. It seems that the principal of the law is that all things end sometime. He said that as a lawyer, he sees without this bill, there is potential litigation that will never

end. This bill would allow for some finite time lines to get things done which is in the public interest.

Dave Allen, Western Environmental Trade Association, said that this is an important step and hopes the committee will recommend a do pass.

Hugh Broadus, Rancher, Colstrip area, said that about 6,000 acres of his land has been used for coal mining with the understanding that he would receive his land back in a reasonable time. This was nearly 22 years ago, and not one acre has been returned. He said that although it is not going to be perfect, some of the reclaimed land is better. He said that he now has water lines where there were none before. The land needs to be reverted back to the original landowners.

William Duffield, Montana Association of Oil, Gas and Coal Counties, said that he supports HB 373. He indicated that it is time that the land is returned back to the land owners.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 28.1 - Tape: 1; Side: B; 21.2}

Doug McRae, Rancher, Colstrip, provided a written copy of his testimony.

EXHIBIT(feh17a03)

Ellen Pfister, Northern Plains Resource Council, provided a written copy of her testimony.

EXHIBIT(feh17a04)

Jeff Barber, Montana Environmental Information Center, said that the goal of reclamation is not necessarily to erase the companies' bonds. He distributed a copy of a memo from Neil Harrington, Bureau Chief, Industrial and Energy Minerals Bureau, DEQ to the Director of DEQ. He also distributed written information contained in his testimony.

EXHIBIT(feh17a05)
EXHIBIT(feh17a06)

Note: CHAIRMAN BITNEY allowed the insertion of an informational witness to accommodate her schedule.

Informational Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 21.2 - 23.6}

REP. MONICA LINDEEN, HD 7, said that this problem is similar to the bills in 1999 regarding eminent domain. She indicated that the committee may want to do what was done with the eminent domain issue. A committee was formed to do a study regarding a resolution to the problem. It worked well for them and she offered that the committee may want to do a similar study for the problems addressed in HB 373.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 23.6 - Tape: 2; Side A; 15.4}

Jeanne Charter, Bull Mountain Landowners Association, provided a written copy of her testimony.

EXHIBIT(feh17a07)

Steve Gilbert, Helena, said that over 30 years he has been a consulting biologist in Montana, Idaho, South Dakota, parts of the northwest. The citizens of Montana end up paying for the effects of long-term mining. He said that the committee go slowly in considering this bill.

Cody Ferguson, Northern Plains Resource Council, distributed the testimony that was originally going to be presented by Nick Golder, Forsyth, Montana, who was unable to attend.

EXHIBIT(feh17a08)

Larry Kralj, Great Falls, Environmental Ranger's testimony was typed per request of Sargent of Arms. Entered as Exhibit 9.

Ric Valois, Great Falls, Environmental Ranger's testimony was typed per request of Sargent of Arms. Entered as Exhibit 9.

EXHIBIT(feh17a09)

Informational Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 15.4 - 17.8}

Steve Welch, Department of Environmental Quality, provided a copy of his testimony.

EXHIBIT(feh17a10)

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 17.8 - Tape: 2; Side: B; 17.1}

REP. BROWN asked Mr. Broadus if the rules that he termed ridiculous were the same rules that Mr. Welch just talked about.

Mr. Broadus said that the DEQ make all the decisions. The mine company and landowner don't have input into the decisions made by DEQ.

REP. BROWN asked if it would help if the landowner and mining company made these decisions in conjunction with the DEQ.

Mr. Broadus said that he thinks that it would be a mediator or a board that would sit between the coal company and DEQ.

REP. BROWN asked Ms. Pfister asked what projects have Northern Plains been in support of in the area of resource development.

Ms. Pfister talked about primacy programs and didn't really answer the question posed by REP. BROWN.

REP. BROWN again asked about specific projects.

Ms. Pfister said that there is a "good neighbor agreement" between the Stillwater Line and local people.

REP. JACOBSON asked Steve Welch if, in his professional opinion, this particular piece of legislation is needed.

Mr. Welch said that there are some areas that are cumbersome and this bill could result in streamlining them.

REP. JACOBSON asked if Mr. Welch was involved with the study referred to by REP. LINDEEN and if it would be appropriate for this bill.

Mr. Welch said that he was not involved but that they would certainly be willing to participate in such a study.

REP. PARKER asked if the proposed definition of the word "reclamation" would lessen the obligation of the coal companies under Montana law. He asked if, by reclaiming the land, the new

definition would allow for some form of an economic project to be placed on top of a site.

Mr. Welch said that it would certainly modify the law. The current law has an emphasis on wildlife habitat. This bill would allow the freedom to propose alternate uses of the land.

REP. PARKER asked if Mr. Welch was concerned that the statutory change of striking the language, "under a plan approved by the department," might undermine the department's authority.

Mr. Welch said that he felt there were other places in the statute that would provide that authority.

REP. RICE asked if there have been any bond releases.

Neil Harrington, Bureau Chief, Industrial and Energy Minerals Bureau, DEQ, said that there have been very few applications for bond releases. Phases one and two in Colstrip have had bond releases.

REP. MENDENHALL asked Mr. Simpson how Montana compares to other states in this matter.

Mr. Simpson said that he was personally familiar with programs in Texas and North Dakota. In North Dakota, an application for a mining permit takes about 18 months. The last one that they did in Montana took nearly four years. North Dakota takes a land approach to reclamation consistent with what is proposed in this bill. In Texas that cannot receive a bond release for ten years to demonstrate environmental stability.

REP. MENDENHALL asked Mr. Simpson if HB 373 would make stiff reclamation voluntary.

Mr. Simpson said that he did not agree with that. The bill would allow for an alternate use of the land.

REP. MENDENHALL asked Mr. Simpson if abandonment would be considered a higher or better use of the land.

Mr. Simpson said that abandonment is not being proposed, but will provide an ending point for reclamation. They are struggling to define qualitative characteristics to quantitative terms.

REP. MENDENHALL asked Mr. Welch the same question regarding abandoning the land.

Mr. Welch said, "No".

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 17.1 - 23}

REP. OLSON said that the DEQ does a good job with the tools that they have. They are caught between two opposing parties but he sees this legislation giving them tools to get something done. He distributed a copy of the bill with margin notes. This bill is strictly common sense. This could lead to additional development. He said that there has been no bond releases for phase three or four projects since the 1970's. This bill is good for everybody involved.

EXHIBIT(feh17a11)

A letter from the Public Service Commission was distributed prior to the hearing on HB 373, but was not discusses.

EXHIBIT(feh17a12)

EXECUTIVE ACTION ON HB 266

{Tape: 2; Side: B; Approx. Time Counter: 23 - Tape: 3; Side: A; 8.7}

Motion: **REP. MATTHEWS** moved that **HB 266 DO PASS.**

Discussion:

REP. OLSON said that he agreed with the proponents, but was concerned about the removal of allocation of funds to the Montana School for the Deaf and Blind. It is going to cost the school funding.

REP. JACOBSON said that it is important to note that the $57,000 funding was a one-time appropriation predicated on the idea that the money was to be used for hearing screening equipment under the proviso under the MTAP program. Since then, the money has been spent for that purpose. There is no further need for infant hearing screening equipment.

REP. PARKER said that the $57,000 was allocated to the school in the Governor's original executive budget. He said that he would have to oppose the bill at present with hopes to recapture the money somewhere else.

HOUSE OF REPRESENTATIVES
Roll Call
FEDERAL RELATIONS, ENERGY & TELECOMMUNICATIONS COMMITTEE

DATE 1/27/03

NAME	PRESENT	ABSENT	EXCUSED
REP. ROD BITNEY, CHAIRMAN	✓		
REP. ALAN OLSON, VICE CHAIR MAJORITY	✓		
REP. GARY MATTHEWS, VICE CHAIR MINORITY	✓		
REP. DEE BROWN	✓		
REP. EILEEN CARNEY	✓		
REP. TIM DOWELL		✓	
REP. DAN FUCHS		✓	
REP. HAL JACOBSON	✓		
REP. JEFF LASZLOFFY		✓	
REP. SCOTT MENDENHALL	✓		
REP. JOHN PARKER	✓		
REP. DIANE RICE	✓		
REP. BRENNAN RYAN	✓		
REP. JIM SHOCKLEY		✓	

EXHIBIT 1
DATE 1/27/03
HB 373

Before the House Federal Relations, Energy and Telecommunications Committee
January 27, 2003
Re: HB 373

Testimony of David W. Simpson

Mr. Chairman and members of the Committee, my name is Dave Simpson. Currently, I am President of the Montana Coal Council, and I have been directly involved in the crafting of House Bill 373 to revise the Montana Strip and Underground Mine Reclamation Act. I reside in Hardin, Montana, where I have lived since 1975, when I joined Westmoreland Resources, Inc., as Environmental Manager. My current title with Westmoreland Coal Company is Vice President, Regulatory Affairs, and I am now based in Billings.

Montana's coal strip mine reclamation act was first enacted in 1973. At the time, it was ground-breaking legislation, requiring effective reclamation of lands surface mined for coal. In 1977, the federal Surface Mining Control and Reclamation Act (SMCRA) established uniform reclamation standards nation wide, to be administered by the Office of Surface Mining (OSM) and implemented and enforced through approved state programs. Since most coal mining states had at best minimal requirements for reclamation, adoption of federal standards was straightforward. But in Montana, where there was a pre-existing statute, the approach was to amend the statute only to the extent necessary to gain primacy. The result was a regulatory program that in some ways is quite different from what was contemplated by SMCRA, and from regulatory programs in other states.

Today, nearly thirty years later, we are in a position to evaluate the Montana regulatory program. The following is quoted from the 2001 OSM Annual Evaluation Summary Report for the Montana Title V Reclamation Program:

> OSM evaluates the effectiveness of the State program based on the number of acres that have received bond release. Several factors combine to result in the low number of acres released from bond including: Bond release applications have been a lower priority (by both industry and Montana) than has mining, backfilling, grading, soiling and seeding activities. Many areas have been reclaimed beyond the minimum period of responsibility as specified by the Montana program, however, industry has been reluctant to apply for bond release. As a result, less than 15 percent of the disturbed lands have received Phase I and II release and no lands have received Phase III final release. Based on these numbers and the guidance from REG. 8, the CFO (Casper Field Office) believes that **the Montana program is not effective in having all disturbed lands reclaimed to the approved postmining land use** contemporaneously (emphasis added).

In fact, through June 30, 2001, more than 12,200 acres of lands mined for coal in Montana had been reclaimed. More than 5,700 acres have been reclaimed for more than the 10-year responsibility period, and are successfully reclaimed by any reasonable standard. Much of this acreage has been grazed successfully for many years. So why is industry reluctant to apply for final bond release?

I have worked with the Montana program for more than 27 years, and I have given a great deal of thought to this question. In its administration of the reclamation program, the Department of Environmental Quality (DEQ) staff is mired in detail driven by its interpretation of the present

statute, that is, that in order to be successful, reclamation must restore the "ecological function." This may be a noble goal, but I defy anyone to tell me what it means in quantitative terms. It is this same perspective that results in a process requiring four years or longer to review an application for a mining permit, when in other states a permit can be obtained in 18 months or less. Given the experience with permit applications, the coal industry is reluctant to apply for bond release because the standards for success defy definition and quantification.

It is often said that before devising a solution, it is best to first identify the problem. The Montana reclamation statute has been effective in requiring reclamation of disturbed lands and minimizing the environmental impacts of surface coal mining. But the problem at hand is that it is seriously flawed with respect to establishing a goal and standards for reclamation success. This has become obvious as coal mining companies are now contemplating bond release. HB 373 corrects this problem by providing a clear statement of legislative intent that the goal of reclamation is the establishment of land use comparable to pre-mining conditions, or higher or better uses. It incorporates language from the OSM regulations to implement this goal and establish standards for success consistent with OSM requirements.

Bond release is a critical issue for coal companies operating in Montana and across the country. In order to obtain a permit, a mining company must post a bond sufficient to cover the cost of reclaiming the mine. For many years, reclamation bonds were cheap and easy to obtain. Mine operators as well as regulatory agencies took the availability of bonds for granted, and the bonding companies paid little attention as long as the premiums were paid. But recent events, particularly difficulties in the insurance industry resulting from languishing financial markets, have created a crisis in the bonding industry. Premiums have increased several fold, from $1.50 per thousand as recently as three years ago to as much as $12.50 today. For a company like Westmoreland Coal Company with more than $150 million in bonds, the increase in premiums alone has a serious financial impact. But bonding companies are not seeing releases, and they are beginning to reassess their risks. Consequently, reclamation bonds can be very difficult to buy at any price.

Coal companies must be able to obtain bonds in order to get permits, and in order to continue obtaining bonds, we must be able to demonstrate through bond releases that we are meeting our obligations under our permits, which we are doing on the ground. It is imperative that release of reclamation bonds becomes a reality in Montana, so that current operators can maintain their permits, and particularly if there is to be development of new coal mines. OSM has placed a priority on bond releases to demonstrate success of the regulatory program under SMCRA. HB 373, by establishing definitive standards for reclamation success based on land use criteria consistent with federal requirements, will enable mining companies to proceed with applications for bond release with a clear understanding of what is expected. Such definitive standards will also bring much greater efficiency to administration of the regulatory program by DEQ.

HB 373 has required more than a year of work in consultation with the DEQ and OSM. It has been carefully crafted to make the language as clear as possible, and maintain compliance with OSM standards for state programs. It is a complex bill with many interrelated provisions. I would be pleased to answer any questions.

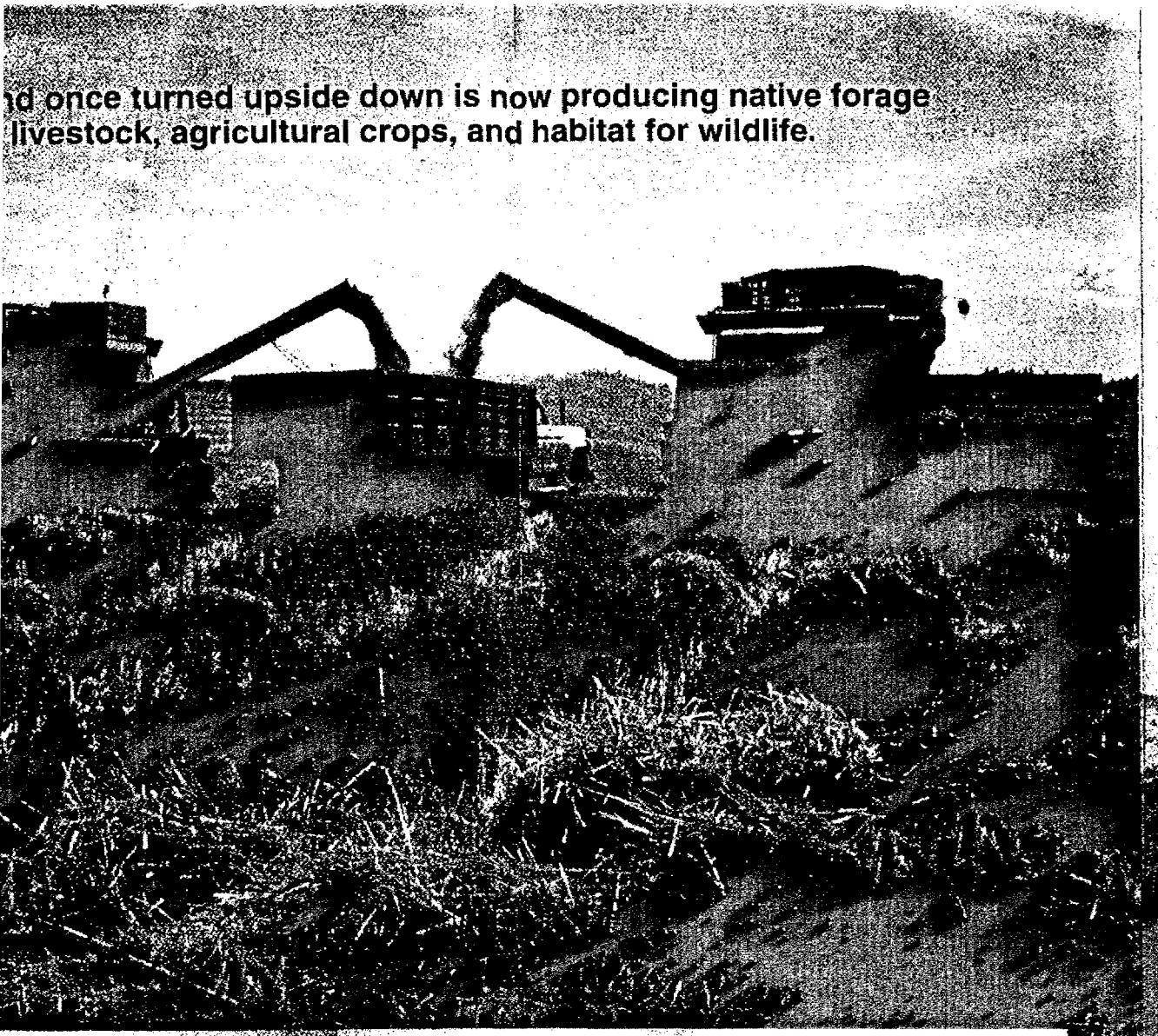
David W Sigrist

EXHIBIT 2
DATE 1/27/03
HB 373

A LAND REBORN

The story of reclamation at Western Energy's Rosebud Mine

With over 6,500 acres reclaimed



nd once turned upside down is now producing native forage
livestock, agricultural crops, and habitat for wildlife.

Reclamation is an integral part of Western Energy's mining operation.

Western Energy Company received national recognition for its reclamation program when Western Energy received the U.S. Department of the Interior's Excellence in Surface Mining Awards in 1990, 1992, 1997, 1998 and 1999.

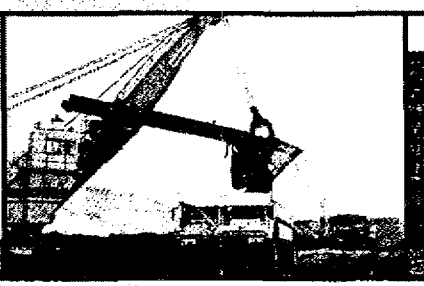
WESTERN ENERGY COMPANY
A Westmoreland Mining LLC Company

Land once turned upside down is now producing native forage for livestock, agricultural crops, and habitat for wildlife.

Pre-mine environmental surveys are conducted.

The first mining activity consists of soil salvage.

A dragline removes overburden to expose the Rosebud coal seam.



Coal is removed by truck and shovel.

Dozers regrade the disturbed surface to the approximate original contour.

In past times, reclamation of surface mined land was done as an afterthought, or it was not done at all. Today, reclamation is an integral part of Western Energy's mining operation.

Prior to mining, many intensive environmental surveys are conducted. Information on hydrology, soils, vegetation, wildlife, and archeology is gathered to formulate a mine and reclamation plan.

Once mining begins, the first step is the salvage of soil. Topsoil and subsoil are salvaged separately using scrapers. Up to 2.5 feet of soil is salvaged and initially stockpiled. After the soil is removed, draglines remove the overburden and expose the 24' thick Rosebud coal seam. One pound of Rosebud coal yields 8600 BTU's. It has 25% moisture, a 9% ash content and a low sulfur value of 0.8%.

The coal is then removed with a truck and shovel operation. The coal is burned at power plants in Colstrip. The four Colstrip power plants can produce 2100 megawatts of electrical power, which consume between 9 and 10 million tons of coal per year.

After the coal is removed, dozers regrade the disturbed surface to the approximate original contour. Once regraded sites are available, soil is placed on the regraded surface. Direct haul soil greatly enhances reclamation success as viable native seeds and important mycorrhiza are retained in the soil. Standard farming procedures, such as discing and chisel plowing follow in order to prepare a proper seedbed.

The majority of Western Energy's reclamation is native rangeland. Seven separate native seed mixes containing cool and warm season grasses, forbs and shrubs in various percentages are drill seeded in appropriate topographic locations.

agline removes overburden
:pose the Rosebud coal
n.

Coal is removed by truck and shovel.

Dozers regrade the disturbed surface to the approximate original contour.

Redistributed topsoil is prepared for planting.

Permanent vegetation is established after as few as three years.

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The majority of Western Energy's reclamation is native rangeland. Seven separate native seed mixes containing cool and warm season grasses, forbs and shrubs in various percentages are drill seeded in appropriate topographic locations.

In some areas, additional trees and shrubs are planted using bare root or containerized stock. Some of the native species planted are western and bluebunch wheatgrass, green needlegrass, blue grama grass, blue flax, prairie coneflower, silver sagebrush and ponderosa pine.

Agricultural fields (small grains and alfalfa) and special use pastures are also reclaimed.

After three years, the vegetation in the reclaimed rangeland will support grazing. Cattle are used to manipulate the new plant communities toward the desired result of regulatory bond release.

New wells drilled in reclamation, some powered by windmills, are installed to provide water for livestock. Reclaimed ponds provide habitat for fish and wildlife.

EXHIBIT 3
DATE 1/27/03
HB 373

My name is Doug McRae. I own and operate a ranch located south of Colstrip, Montana which was established by my great-grandfather in the 1880's.

Through a series of agreements our family corporation entered into with the Peabody Coal Company and the Western Energy Company, we sold or exchanged property which is currently being mined by both of these companies. These agreements also allow me to utilize land not being mined for grazing purposes and allows myself or my successor the option of repurchasing this land after all state and federal requirements pertaining to mining and restoration have been met.

We have grazed cattle on revegetated mine land for approximately 25 years. Consequently I have had the opportunity to observe first hand, both prior to and following implementation of this law, the mining process, revegetation utilizing native and non-native plant species, livestock response while grazing this revegetation, impoundments and there use by cattle and wildlife and a whole host of other mining activities.

I am concerned about some of the changes proposed in House Bill 373.

Most of the land being mined in Montana had previously been utilized as agricultural land. I think that it is reasonable to require that all of this land be returned to it's prior agricultural use. By changing the definition of surface owner, as proposed in this bill, mining companies will be deciding post-mining land use with out having to consider the impact of that decision on adjacent landowners and it's impact on there operation and the local economy.

Also, by allowing the companies to determine what is the highest and best uses I fear that there is a possibility that there could be lands converted to non agricultural use incompatible with the surrounding land and the people who inhabit it.

Another area of this legislation, Section 6 c, concerns the approval of impoundments if appropriate for post-mining land use. While I believe they offer a reasonable option as a replacement for wells and springs lost to mining, I think there should be limits as to the size and degree to which they are used. Also, if replaced ephemeral streams are diverted or intercepted to create these impoundments the water rights of downstream users should be protected.

I am also concerned with allowing the use of introduced species to revegetate mined lands. I think that there are some introduced species which can enhance rangeland and add to it's diversity, but I also believe there should be an opportunity for adjacent landowners or agricultural interests to

influence the type and kind of introduced species used. Under the changes proposed in this bill, I believe seed cost and ease of establishment would take preference over other criteria such as the nutritional qualities of those grasses.

In conclusion, I understand there have been problems that have been encountered by the companies in meeting the criteria for bond release such as the establishment of ponderosa pine trees on reclaimed land. Nonetheless, I believe the changes in this bill go too far in trying to rectify that problem. I also believe that both the companies and my family had reasonable expectations that the land would be returned to grazing land and I sincerely hope that the portions of this bill changing that are dropped.

Thank you for the opportunity to speak today.

EXHIBIT 4
DATE 2/27/03
HB 373

HB 373—Hearing
Committee on Federal Regulations, Energy and Telecommunications
House of Representatives, State of Montana
January 27, 2003

Ladies and Gentlemen:

I am Ellen Pfister, a rancher from the south side of the Bull Mountains in Yellowstone County, Montana. For 30 years the coal industry has been making life interesting for me, and it is because of the coal industry that the Northern Plains Resource Council exists. I am speaking on behalf of Northern Plains today.

House Bill 373 moves the aim of the reclamation act to return coal mined lands to as nearly a premine condition as possible to a goal of ensuring the complete return of the operators' bond. The Montana Strip and Underground Mine Reclamation Act, first passed in 1973 and amended in 1981 to comply with SMCRE at the federal level, has been the vehicle used to do this. The proponents of this bill are telling you that the act is broken, when in fact they have never tried to use the provisions for Phase III and IV bond release.

By the time the permittee has completed Phase II Bond Release, it has all ready had returned to it almost 80% of the bond money, which the operator can use to apply to other areas in the process of being disturbed. The Montana permittees have never tried to release a single acre at the Phase III stage. They have had ten years to try the process, and they do not want to risk evaluation of their work. Without a trial they have declared the process broken and the standards unattainable.

Yet for 30 years, the coal industry has been telling the State of Montana and those of us who live in the coalfields, that industry can fix the land and put it back better than it was before they mined it. The first reclamation that was done under the 1973 law was done in just such a manner, complete with irrigation, fertilization and introduced species guaranteed to produce better than the native species. Irrigation and fertilization cannot be continued indefinitely in dryland areas, and when the props were withdrawn from the introduced species, their production promptly collapsed. Western Energy waited about 20 years, came to the legislature and got a special exemption to release the bond on the failed reclamation of the early 1970's.

As a result of the failure of the 1970's the reclamation standards for vegetation were changed to a native, diverse, and self-sustaining vegetative cover. The Federal standard is "Diverse, effective, and permanent...". The only plants that we know for sure that are permanent in the climate and soils of eastern Montana are the native plants and grasses---a mix of cool and warm season grasses. That standard protects the state from the agricultural fads that come and go, and agriculture is just as subject to fads as the next industry. 70 years ago crested wheat grass was the cat's meow, and BLM planted it by the thousands of acres on its land. Now crested is considered a limited use grass.

If we retain the current standard in the law, all other uses can flow from this standard. If the mined land can sustain its native cover, then it is less likely to crash if plowed as farmland or planted to hay land. The inputs need not be so great for subsequent users. Even with vegetation meeting current standard, lands as extensively disturbed as these mined lands may well require more intensive management than unmined lands.

HB 373 limits the applicants' responsibility for water quality and quantity by attaching those parameters only to the end use of the land and the water's beneficial use. Those of us who have followed this issue closely for years have come to the realization that the only reclamation for water within the permitted area, pursued by the state and the operators, is to be done by geological time. Interrupted aquifers run into the spoils with no remediation. The mine pit area is an area of water quality degradation. The Federal standard is to minimize damage to water within the mine and to prevent damage on adjacent land. Neither the state nor the operators have dealt with the minimization of damage to water within the mine. Now under HB 373, that degradation is allowed to extend to adjacent land. The fight will be on how bad a quality water a cow can drink and still survive. However, the poorer the quality water, the harder it is for an animal to thrive and produce. Poorer quality water after mining precludes uses that might have been available before mining.

is permissible on the "alternate" land uses described elsewhere in the definitions. To comply with SMACRE, erosion control must be done regardless of the end use. In HB 373, the hydrologic balance of the area is protected only as necessary for the end use. The SMACRE regulations use the wording that the hydrologic balance must "support" the end use, which has a different connotation than "only as necessary".

But what is the hydrologic balance supportive of wasteland? CFR Section 816.133(d) (9) lists only the alternative uses of residential, commercial, industrial, and public (including recreational), which may be requested as variances by the landowner. Nowhere is "undeveloped land" as defined in the proposed definition listed as an alternate use or a higher and better use. The change in the current definition of "Landowner" gives the coal company complete control over the future uses of large tracts of eastern Montana, including the power to turn them into useless land. It alsodisregards the interests of those who are contracted purchasers of the land after mining.

HB 373 has some strange verbatim inserts from the SMACRE regulations, inserts that would be better left in regulation rather than law. I don't know if those are red herrings dragged across the trail to distract from the real purpose of this bill or not. HB 373 has just lowered the standards for reclamation in Montana to below the federal standards, by inventing a new category of reclamation which boldly and baldly allows the companies to leave a wasteland, both in terms of vegetation and hydrologic balance. If there are responsible companies mining in Montana, HB 373 is a public relations nightmare for them.

Land is Montana's capital. We cannot afford to lower the standards for its long term use. After the coal is gone for 99% of eastern Montana, grazing and wildlife with some forestry will be the predominant use. You will be here looking for something to tax. If you go with the cheapest way out for the companies, as presented in House Bill 373, you will be opting for the lowest tax base in the future.

What is the taxable value for useless land? Is it this committee's desire to create large amounts of waste land in eastern Montana so that we can have the Appalachian experience? The bond is posted for the long term interest of the state of Montana, not for the short term interest of the operators. I urge you to kill this bill in committee.

EXHIBIT 5
DATE 1/27/03
HB 373

Montana Department of
ENVIRONMENTAL QUALITY

MEMO

TO: John North, Jan Sensibaugh, and Steve Welch

FROM: Neil Harrington, Bureau Chief
Industrial and Energy Minerals Bureau

DATE: September 10, 2002

SUBJECT: Proposed Changes Submitted by Dave Simpson (Westmoreland Mining LLC) to the Strip and Underground Mine Reclamation Act

This is in response to Steve's August 15 memo soliciting any comments from IEMB on the 7/15/02 draft of this proposal.

General Response

The main comment about this proposal is that it is unnecessary for the following reasons. Current revegetation problems or issues at the coal mining operations appear to be the basis for the proposed legislative changes. Tools and options to address these problems and issues under the current law have been brought to the table by the coal program and discussed, at least to some extent, with all operators. Generally, we have had positive response and cooperation from all operators with which we have attempted to have dialogue, with one exception – the Absaloka Mine (owned by Westmoreland Resources, Inc. and Washington Group International, Inc.). (We have yet to have any detailed discussions with the Savage Mine about these matters.) The thrust of the proposed changes is to make postmining land use the focal point for reclamation in all of its manifestations. More specifically, the primary postmining land use would be grazing land for livestock and other agricultural uses, regardless of the premining land use [82-4-232(7)]. Fish and wildlife habitat would be relegated to a minor role. Related changes to 82-4-233 would place tree and shrub reestablishment in a significantly reduced category. The apparent reason(s) for these proposed change (the only one(s) apparent to us) is that the Absaloka Mine is unwilling or believes it is unable to meet certain objectives in its permit with respect to tree and shrub reestablishment and wildlife habitat reclamation, or is unwilling to engage in discussions with IEMB to resolve its revegetation problems.

However, based on the process we have established with most other operators in the state to address revegetation problems and issues, there seems to be little reason to make such drastic changes as proposed. Pursuing this proposal to change the Act would generate a lot of

unnecessary work for the legislature and DEQ, and, a significant quantity of state resources and funding (at taxpayers' expense, of course) would be used. IEMB and most of the operators have invested an enormous amount of energy, time, and money in the present process of addressing revegetation problems and issues under the current law. Such drastic statute changes as proposed would potentially result in an enormous waste of resources already spent in resolving current issues and diverting the coal program in a new direction.

If these proposed changes were to be adopted, additional time and resources would be spent on a number of other fronts. If adopted, the proposed statute changes could not be implemented immediately by those operators so interested, as with all such changes. New rules would need to be written. Permit revisions would need to be submitted for review by IEMB. The scope of the proposed statute changes suggests that MEPA review would be required for such permit revisions; this would entail revisiting old EIS's or EA's that were written on the basis of quite different reclamation plans. This could involve a more in-depth investigation of effects and perhaps acceptability of such changes of reclamation plans on wildlife species given special consideration such as raptors and migratory birds. This would involve time and money spent by the coal program and other DEQ support services for unnecessary purposes.

The desire, and need in some cases, by operators to reclaim to cropland and special use pasture (or pastureland, as the proposal calls it) can be pursued under the current law and rules. We have worked with most operators to identify options and possibilities to include these postmining land uses in their reclamation, to the extent that such lands were in the premining landscape as prescribed by the rules. Some operators have successfully permitted such options, have submitted such plans for review by IEMB, or are in the process of formulating plans. Additional options for dealing with old reclamation that do not meet expected standards were inserted into the law (82-4-233 and –235) several years ago, which at least one company is poised to apply to its operations.

Another reason that many of the changes are unnecessary is that several portions of the proposed new language are by and large already in the rules and/or guidelines. For example, much of the proposed definition of "approximate original contour" comes from the rules, guidelines, or interpretations thereof. The definitions of "ephemeral drainageway", "higher or better uses", "hydrologic balance", "intermittent stream", "perennial stream", "reference area", and many of the specific land uses, e.g., "cropland", are already in the rules. The proposed new text under 82-4-222(1)(m) regarding probable hydrologic consequences is in the rules. Much but not all of the new proposed text in 82-4-232(1) is already captured in the rules or guidelines, or is a non-issue [e.g., the first sentence in 82-4-232(1)(b) and the first sentence in 82-4-202(3)].

Specific Comments

The second sentence in proposed new subsection (3) of 82-4-202 states only one standard for reclamation success, which contradicts the statement of all of the other standards for reclamation in the statute.

In 82-4-221(3), the proposed reduction from 120 to 30 days for the maximum time allowed for review by DEQ of minor revisions would unduly hamstring our ability to effectively manage the program. We do not routinely or often take 120 days to review and respond to minor revisions. To quantify this more specifically, the average of response times (from the date of receipt) to all minor revision requests received from the Absaloka Mine in 2001 and to date in 2002 (including comment letters, a few verbal responses, and approvals) averaged about 53 days. The range of response times varied greatly, from 2 to 124 days. The 124-day instance happened on a revision submitted early this year by the mine to update ownership and control information in the permit. The reasons for the long response time involved the priority for the designated staff to work on EPP during this period and the fact that this revision was not crucial to the Absaloka mining operation. This is not an excuse to miss mandated timelines (which has rarely occurred), but only to explain why long response times may sometimes occur. Also, we need to maintain the option of having up to 120 days, because of the complexity of some minor revisions and due, at times, to limited staff (we have had vacant positions since spring of 2001) or, as mentioned before, limited staff time during certain periods of high priority projects, which can also involve industry projects such as in 2001 when we prioritized the processing of two major permit revisions (Spring Creek amendment and Western Energy Area D amendment). If our review time on minor revisions were to be reduced as proposed, our ability to conduct technically adequate and thorough reviews of revision requests and our ability to manage the program in the best interests of the coal industry, as well as the coal regulatory program, would be severely affected.

Under 82-4-232(1)(a), the reference to the use of cross-sections and range diagrams would seem to preclude the use of more modern and commonly used tools for PMT work, i.e., computers.

We agree with the general concept that is captured in 82-4-232(7)(a) of allowing land uses such as pastureland and cropland to be allowed in reclamation, to the extent they existed prior to mining, without having to go through the alternate reclamation procedures.

The shift in the definition of grazing land (82-4-203) compared to that in our rules [17.24.301(62)(c)] and the changes in 82-4-232(7) and -233 regarding grazing land and wildlife have removed wildlife habitat use from the equation or relegated it to a peripheral component. Also, in 82-4-232(7)(b) and (c), the language allowing for an increase in pastureland or cropland over premining amounts is open-ended. This means that all disturbed acreage could conceivably be reclaimed to pastureland or cropland, regardless of the premining uses. All of these changes would allow for a significant shift of land use types from the premining condition to the postmining condition. This could be problematical in some cases, e.g., where federal lands or wildlife issues involving special habitat, species of special concern, migratory birds, raptors, or threatened and endangered species are involved. In addition, this would also give landowners whose lands are included in mining operations a conceivable economic benefit compared with other farmers and ranchers in the region. This benefit would emanate from the mine operator being able to convert the mined lands from, e.g., grazing land or wildlife habitat to cropland or pastureland, at no cost to the affected landowner. Is there some state law or policy against

institutionalizing a practice that would give certain selected landowners or corporations a market or competitive advantage?

In 82-4-234, the proposed deletion of the last sentence would remove controls on disturbing reclamation. It seems reasonable to give DEQ control over the kinds and the procedures for allowing disturbance of reclamation. Infrequently, inadvertent disturbance or carelessness has resulted in damage and unauthorized disturbance for which operators have received violations. This is a small price to pay for the benefit of maintaining some control by DEQ over the integrity of reclaimed areas.

Please see the attached memo from Angela McDannel for comments on hydrologic aspects of the proposed changes.

NH/dv

Attachments

629.60

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EXHIBIT 6
DATE 1/27/03
HB 373

House Bill 373

82-4-203. Definitions. Numerous definitions were added, most of which are in the current administrative rules. However, there have been some changes, compared to those in the rules, of the definition of some terms. Also, some completely new terms have been proposed.

- The addition of numerous definitions already found in the rules will not change the program in the foreseeable future. However, it would have the effect of making it more difficult to change these definitions, if such was ever deemed necessary by DEQ.
- The definition of "approximate original contour" (AOC) has been expanded to include concepts and factors that would allow for greater departure of the postmining topography from premining topography, in the context of proposed new text in 82-4-232(1).
- Also, the proposal for AOC includes more restriction, compared to that currently found in the rules, on the use of spoils from the initial pit to backfill the final pit. The provision in the rules that would be preempted is: "[Initial-cut] spoils or portions thereof must be hauled to the final cut if: (i) excessive large areas of the mine perimeter would be disturbed by proposed methods for highwall reduction or by regrading of box-cut spoils..." Although this requirement has been used rarely, the result of preempting it would be the potential for allowing larger areas of disturbance around a mine perimeter.
- The proposal adds the term "coal refuse piles" among the things that must be eliminated in reclaiming to AOC. This term is found nowhere else in the law or administrative rules and is undefined; the term "waste piles" is used in the AOC definition in the rules and "waste" is defined there.
- The proposed definition of "grazing land" would be confined to livestock and would remove any reference to wildlife, compared to the definition of "grazing land" in the administrative rules. This is significant and will be discussed in the context of proposed changes in 82-4-232 and -233.
- Two terms proposed for definition, "hydrologic balance" and "restore/restoration" (currently found in the Act in many places, but undefined), and one definition to be revised, "reclamation", include a reference to postmining land use as a key focal point. Whether this would have any effect on the current regulatory direction or would meet with federal (OSM) approval is unclear at this time. The proposed definition of "hydrologic balance" is already found in the administrative rules, except for the addition of the reference to postmining land use.
- A new term ("wildlife enhancement feature") and its definition have been proposed. This will be discussed in the context of its use in proposed new text [82-4-232(9)].

82-4-221. Mining permit required.

- The maximum amount of time for DEQ to review minor revisions would be reduced from 120 days to 60 days (with the possibility of an additional 30 days with operator concurrence). We do not routinely or often take 120 days to review and respond to minor revisions. However, the size and complexity of some minor revisions, coupled with the need to carry out other ongoing responsibilities and services, supports the need to maintain the option of having up to 120 days. The shortening of review time for large and complex revision applications could result in a delay in meeting other responsibilities or delay or cancellation of other services provided by the coal program, given an unchanged level of staff and operational funding.

82-4-222. Permit application.

- New text on probable hydrologic consequences, postmining topography, and premining land capability and productivity is being proposed. Most of this is already found in the administrative rules or in DEQ guidelines, or appears to be consistent with the current direction of the program. Thus, this will not change the program in the foreseeable future. However, it would have the effect of making it more difficult to make changes to these subject areas, if such was ever deemed necessary by DEQ.

- Text on hydrologic monitoring has been added. This appears to be generally consistent with the current program rules and direction at this time and therefore with OSM requirements; however, more in-depth study of this would be necessary to verify this.

82-4-231. Submission of and action on reclamation plan.

- In (10)(k), the standard to "minimize the disturbances to the prevailing hydrologic balance at the mine site...and to the quality and quantity of water..." would be revised by adding "as necessary to support the postmining land uses..." The same additional text would be inserted in (10)(k)(viii) in the same set of provisions on protecting water resources. It is not clear at this time if this proposed addition would be consistent with federal law and regulations (OSM).

82-4-232. Area mining required—bond—alternative plan.

- In (1), revised text on backfilling and grading would remove the requirement for a maximum reduced highwall slope of 20 degrees and also would remove other associated text regarding highwall elimination. The removal of the 20-degree requirement is supported by the program, because it is arbitrary and does not recognize alternatives, such as leaving portions of highwalls at steeper slopes for wildlife habitat considerations. It is not clear whether the elimination of the other associated text would pass OSM muster.
- Also in (1), other text on postmining topography (PMT) that is taken from the current rules or is found in DEQ guidelines is proposed to be added. This will have no effect on the program, except for making it more difficult to change any of these provisions, should this prove to be necessary or desirable to DEQ.
- Again in (1), text allowing for DEQ approval of PMT gentler than premining would be added. On its face, this is not inconsistent with what DEQ already does; obviously, the premining topography cannot be replicated by PMT. However, the added text is being proposed in conjunction with the changes in the definition of "grazing land" (see above) and in 82-4-232 to allow for less restriction in the selection of postmining land use. This would have the effect of allowing for steep complex premining topography and associated vegetation that provides a variety of wildlife habitat to be flattened and smoothed out to support different vegetation targeted to support land uses such as grazing land, pastureland, and perhaps cropland.
- The alternate land use provisions of (7) and (8) would be replaced by new text in (7)-(10) that would revise how postmining land use may be selected. Currently, the law is written so that the primary postmining land uses must be grazing land and wildlife habitat (supported by a permanent, diverse, vegetative cover). Alternate land uses [which could include pastureland (called special use pasture in the rules), cropland, industrial, etc.] may be allowed under certain conditions, some of which are defined in the rules. For example, the rules currently limit the options of reclaiming to pastureland and cropland (or to a combination thereof) only to the extent that they existed prior to mining. While the proposed new text repeats some of the conditions upon which alternate land uses are allowable in the rules, it would allow for much less restrictive selection of postmining land uses. This means that much more disturbed acreage could be reclaimed to pastureland or cropland (with some general limitations), regardless of the premining uses. In addition, "wildlife habitat enhancement features" (as now proposed for definition) would be required as appropriate to be incorporated with alternate land uses; however, the emphasis would be on game species, threatened and endangered species, wetlands, and riparian areas (song birds, small mammals, and reptiles are not mentioned. These provisions, coupled with removing wildlife from the definition of "grazing land" compared to that in the rules (see above), would allow for relegating wildlife habitat to a peripheral component of reclaimed landscapes compared to premining conditions.
- The procedure for processing alternate land use applications would be simplified, because the current procedure involving following the major revision process with public notices, etc. would be eliminated. This would streamline the process.

82-4-233. Planting of vegetation following grading of disturbed area.

- Revegetation requirements are proposed to be revised to coincide with the changes in postmining land use in 82-4-232 described above. Also, some provisions in the current rules are being proposed for inclusion here.
- To the extent that wildlife habitat in reclamation landscapes is deemphasized, trees, shrubs, and probably forbs would not be included or would be reduced in the revegetated landscape.
- The predominantly native species focus for reclamation in the law and rules would be reduced due to changes in 82-4-232 as well as –233.

82-4-234. Commencement of reclamation.

- The proposed deletion of the last sentence in this section would remove DEQ control on disturbing of reclamation by operators. It seems reasonable to give DEQ control over the kinds and the procedures for allowing disturbance of reclamation. Inadvertent disturbance or carelessness has resulted in damage and unauthorized disturbance for which operators have received violations, but this has occurred infrequently. This is a small price to pay for the benefit of maintaining some control by DEQ over the integrity of reclaimed areas.

82-4-235. ~~Inspection of vegetation~~ Determination of successful revegetation – final bond release.

- This section has been changed significantly by the proposed insertion of specific language on success standards for revegetation associated with various land uses, in conjunction with the proposed changes to 82-4-232 and -233. The terms effective, permanent, diverse, and seasonality regarding their relation to the success of reestablished vegetation are defined. Diversity is simplified and is somewhat vague regarding the insertion of the phrase "multiple species". The proposed definitions of these terms would require further assessment to determine their effect on the regulatory program.

The main effect on the coal regulatory program of the proposed changes to 82-4-231, -232, -233, and –235 would be the submittal by operators of revisions to their PMT, postmining land use, and/or revegetation plans that would incorporate these changes. To the extent that operators exercise these options, it would result in additional permit revision processing by the coal program, including review and revision of previous EIS's and EA's that were written on currently approved reclamation plans. Depending on the time required for this additional permit processing and the priorities established for these projects, other responsibilities that the coal program must meet could be delayed and other services that it provides could be delayed or cancelled, given an unchanged level of staff and operational funding.

EXHIBIT 7
DATE 1/27/03
HB 373

Bull Mountain Landowners Association
An affiliate of the Northern Plains Resource Council

My name is Jeanne Charter. My husband Steve and I own and operate a commercial cattle ranch north of Billings. I am testifying today against HB 373 on behalf of the Bull Mountain Landowners Association. We need responsible natural resource development in order to keep Montana a good place to live and work.

Have any members of this committee ever visited the coal fields of Appalachia? I have been back there, and it is a sad place: mile after mile of abandoned mined land. The coal companies still hold title to most of it, but don't put it to any productive use themselves and won't sell if or even lease it out for anybody else to use. Mined out and abandoned land is the dominant land use back in the coal fields of Appalachia, and it has beggared that region. If HB 373 becomes law, the coalfields of Montana will end up as a western Appalachia.

In a nutshell, the problem is that HB 373 makes good reclamation voluntary. It reduces the current law's reclamation standards from legal requirements to optional suggestions.

You have to read the text very closely to see what the bill's authors have done. Do you know the old saying "the devil's in the details"? In this case, the devil's in the definitions. HB 373 adds abandoned land—defined as **"undeveloped land that has no current use or is not being managed" in Section 2 (53) (a)**—as a legal postmining land use. Effective erosion control, regrading, revegetation and watershed restoration are not required for the abandoned land use alternative. p. 9

The mine owner is free to choose the abandoned land use alternative at his sole discretion. HB 373 legalizes abandonment by defining **"higher and better uses"** to include non-use as having **"a higher economic value or noneconomic benefit to the landowner" in Section 2 (23).** p. 5

Some committee members may believe the mining industry will do good reclamation voluntarily rather than choose HB 373's abandoned land use alternative. In reality, any company that did good voluntary reclamation would put itself at an economic disadvantage to its competition. Good voluntary reclamation is an economic impossibility without an offsetting financial penalty for non-performance. For example, a stiff unreclaimed land and water tax coupled with generous performance credits might work as well or better than liability bonds and would be worth consideration.

However, permitting abandonment of mined land would beggar eastern Montana as it has beggared Appalachia. Please vote against HB 373.

Thank you for the opportunity to testify,

Jeanne Charter
13838 Hwy 87 N, Shepherd MT 59079
406-947-2151, email: charter@ midrivers.com

Unreclaimed land & water tax minus full restoration credits

assumptions: #20/acre/year on disturbed acres

-$10/acre/year credit for regraded, topsoiled + planted

-$5/acre/year credit for 10 year revegetation

-$5/acre/year credit for hydrology restoration

---

0 tax

Mine (2001 Reports)	Permitted Acres	Disturbed to date	Regraded, topsoiled & planted	Revegetated 10 years	Unreclaimed land & water tax ($20/A) minus restoration credits
Absaloka (Westmoreland)	5387	3301	66%	25%	$66,020 - 25,915 credits $40,105
Western Energy (Westmoreland)	A 4162 B 6056 C 9286 D 3267 22,771	2731 3118 3974 2019 11,842	46% 33.6% 40.9% 47.4%	36.5% 23% 16.2% 8.1%	$236,840 - 57,930 credits $178,910
Decker	E 4361 W/N 7207 11,568	2019 4480 6499	17.9% 31.9%	1.8% 8.9%	$129,980 - 20,075 credits $109,905
Spring Creek	6706	2669	16.6%	0.63%	$53,380 - 5,270 credits $48,110
Peabody	A 2655 B 5459 8114	1659 2093 3752	39%	24.2%	$75,040 - 19,230 credits $55,810
Total for all mines	54,546 a.	31,815 a.	16-66%	.6-36%	$56,260 annual tax - 128,420 credits $432,840 general revenue

EXHIBIT 8
DATE 1/27/03
HB 373

H.B 373

I live near Colstrip and have watched the revegetation develop from the first temporary attempts with introduced species. They finally tried locally grown native species and that gave them the vegetation they are glad to point out in their reclamation. And, as a rancher, a lot of that vegetation looks pretty good to me too. Of course, we were called obstructionists when we tried all along to get them to use native species. I guess it didn't fit in with their training.

We were really called obstructionists when we were involved in getting the coal severance tax established. Now look at its place in the state's financial structure.

I say the above just to point out the possibility that what we have to say about House Bill No. 373 might also have some long-term merit. Others will talk about several of the issues, but my remarks will mostly deal with the subsurface water that continues to pour in underground to the side of the refilled pits. As this water soaks through the spoils material it picks up two to four times as many dissolved solids as it had when it entered the refilled area. So, if it entered as good water, it will leave the former pit as poorer quality water. If it was marginal when it entered it will be unusable at the exit area. [Saline seep from strip farming is caused from too much good water soaking through the soil and dissolving minerals along the way.] This is hardly a desirable thing to do in arid eastern Montana where aquifer water is the lifeblood of the land.

Sec. 4 [1][m] requires a determination of probable hydrologic consequences in a proposed mine area, both on and offsite, so that cumulative impacts upon surface and ground water availability can be made. The permit may not be issued until the information is available and incorporated into the application. Degredation of the quality or quantity of water outside the permit area is called "material damage" in Sec. 2 [30]. One of the places where protection of the hydrologic balance is mentioned is in Sec. 2 [4][c]. So, there is material damage to the hydrologic balance in many instances where the inflow to a refilled pit is not reconnected to the outflow across what was formerly the mine pit. This reconnection can be done with a connecting French drain, or some other conduit for the water on the significant aquifer flows. Phase IV bond

release requires that the hydrologic balance be functioning properly.

Revegetation refers to the plants on the surface of the land. Reclamation would be where the revegetation and the hydrologic balance are restored to something like the original conditions previous to mining. The heading in bold print in Sec. 9 seems to couple successful revegetation together with final bond release. However, Phase IV [final] bond release requires a properly functioning hydrologic balance along with successful revegetation, so there is apparently a serious problem with that heading.

Vague phrases and contradictory verbiage in House Bill 373 allow quite a lot of room for mischief, so I would recommend a "no" vote for it.

Nick Golder
Forsyth, MT

EXHIBIT 9
DATE 1/27/03
HB 373

EXCERPTS OF TESTIMONY FROM HEARING ON HB 373
January 29, 2003
Room 303

Larry Kralj, Great Falls, member of the Environmental Rangers, said that he appreciated the opportunity to speak today. I apologize in advance if I get a little choked up as I am speaking. I always get a little choked up when I hear the mining industry and how tough they have it and it brings tears to my eyes if I get a little choked up, I apologize. It remains incredible that in so many instances there appears to be no relationship between the mortality of a bad idea and the massive weight of the evidence against it. I maintain that this is a bad idea. The mass of the weight of the evidence has been presented by the people here in the room today. I would really recommend that you people, that have the responsibility to protect Montanans, listen to what they have to say, they make a very good case. Do you know what the other thing that I'm hearing here today is that I think it is really important to speak truth to power. I think it's important to speak truth to insanity, idiocy, stupidity, and corporate value. You know, there are no term limits on memory, folks. Many of us remember what the old Montana was like when things were done with cash under the table (and heads rolled?). And I hate to say it, but so many of us out there in the public, that appears to be the case in this particular instance here. I'm a member of the public, I did not hear if you did, I did not hear a huge cry out there in the public that we needed to undo the reclamation laws on strip mining, but you know what I do remember, I remember when they started to build at Colstrip, 1, and 2 and 3 and 4 and so on and so forth _____reclamation rules tooth and nail. But you know they were able to work with the ranchers over in the area and developed a workable, viable solutions to the problems and you know what, and now the mining companies out there at Colstrip bring people around and show them and say, "wow, look at the reclamation work we've done". It's a showcase for that. And all of a sudden we want to undo that process that has worked for the last 30 years at the behest of mining, one single mining company? I don't think so. That really irritates the heck out of me. I hear a lot about economic development. I _____against economic development, so I'm saying the same thing I've told other committees, and that is, economic development must make economic sense. In other words, if the citizens of Montana are left holding the bag for the cleanup, it's cheaper to pay the workers to stay at home. I think the examples of that in recent Montana history are myriad, _____, Landusky, Arlee, Pony, any place you want to go, people of Montana are going to cleanup/pay for these messes. That's not economic development because it doesn't make economic sense, so (get it out the miners) or it is cheaper to pay people to stay at home. That doesn't make any sense, not economic sense. What else that's going here is we _____to pass bad legislation and I see that going on right here. First of all, what you do is you create a distraction and I think that our, so called, energy crisis is the distraction that is being used here. We all know now that the energy crisis was manufactured, artificial, illegal, criminal activity, you know, perpetrated by some large energy outfit. There was no energy crisis. Now everyone's attention has been deflected by this rah, rah thing by the coal companies that have to clean up everyplace in Montana. Well, it doesn't work that way. The other intention is to starve the agencies responsible for bonding and that sort of thing, so they can't perform their jobs. (couldn't hear this sentence). This looks like an attempt to attack, with all the other problems of the state, budgetary problems, schools, and everything else, this looks like an attempt to sneak something through when people aren't paying attention. Well, I guarantee you,

we are. I would remind you, it's your job to defend Montana from these people who want to come in do business in an unprofessional way. Every proponent setting over here is connected with the mining industry. Every opponent to this bill is a resident of Montana who elected you all, you folks, so I would respectfully request that you pay clear attention to what these people are saying. And last, I might add that anybody that has talked today, anybody that is breathing should be _____ with water. It is the utmost critical resource Montana has right now. Any degradation to Montana's water cannot and should not be allowed. When the mighty companies come in and say the water is good enough...no it is not good enough. You people have an important job and I would just like you to consider everything that has been said here today to make your decision. I thank you for taking the time.

Ric Valois - Environmental Ranger, Great Falls

I can't really add too much to what I've heard today. I want to go on public record as opposing HB 373. If I could say something else, kinda like a neighbor to neighbor casual thing, is if you think these coal companies to come into the state to beautify the state and to add flowers and wildlife and adding resources to the state, folks they are here to dig. And that's what they do, they are diggers, and they are chewers and clawers. They want us to believe that they can regulate themselves better than our environmental agencies. I have sympathy for some business people when they get over-regulated by government. I usually don't see over-regulation on the level that these people are talking about, it's usually the little mom and pop outfits that gets regulated to death. Folks, if you want to see crime, big crime always comes from the inside and it is never about pennies and nickels. I'm not going to sit here and say the coal companies are _____, they are in it to make a buck. They are in it to make money. They will do anything they can to expand the product levels, just like anyone else. They are not going to regulate themselves. Digging and mining is not about the future. It's invested in digging. That's the end of it. We can't afford this anymore. We can't afford bad business and we can't afford bad mining. Do the right thing here. The eyes of Montanans and the eyes of the Rangers are all upon you. Thank you

EXHIBIT 10
DATE 1/27/03
HB 373

House Bill 373

Mr. Chairman, members of the committee, my name is Steve Welch and I'm representing the Department of Environmental Quality. We are the state agency that administers Montana's Strip and Underground Mine Reclamation Act.

I thank the MT Coal Council for sharing with our agency, their proposed changes early in the drafting stage, because there were certain issues identified that would conflict with other parts of the statute, other laws, and the Federal act and rules. We believe most of those issues have been corrected, although the Office of Surface Mining must approve all changes because we have a delegated and approved program and as such ours must be as stringent as, and no less effective than the federal law and rules.

A number of the proposed amendments, including Approximate Original Contour, Post Mine Topography and Hydrologic balance that would be placed into law are currently in similar form in rules and/or guidelines. Inclusion into the statute may remove some flexibility currently enjoyed by applicants and the regulatory authority, however it may provide more long-term, consistency and less interpretation by both.

Major components of the amendments are directed toward post mine land use and by doing such, removes the current co-emphasis on wildlife and livestock grazing. This theme is evident in many of the proposed changes and there will be greater opportunity to reclaim to other uses, including those defined as higher and better.

The proposed revegetation requirements very closely follow that which exists in the Federal Rules and the measurement of revegetation success is more clearly defined. These will potentially result in shorter time frames and an easier process for bond release.

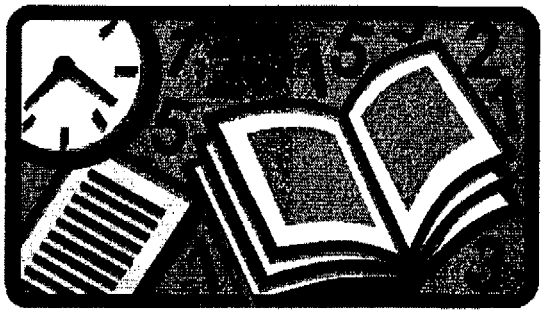

Exhibit Number: 11

This exhibit is a collection of several papers, which exceeds the maximum amount that can be scanned.
If you wish to view this exhibit it is on file at the
Montana Historical Society
225 North Roberts Street
Helena, MT 59601
(406) 444-4774

EXHIBIT 12
DATE 1/27/03
HB 373

PUBLIC SERVICE COMMISSION

PO Box 202601
Helena, Montana 59620-2601
Telephone: (406) 444-6167
FAX #: (406) 444-7618
E-MAIL: browe@state.mt.us

Bob Rowe, Chairman
District 5

January 24, 2003

Chairman Rod Bitney
House Energy and Telecommunications Committee
Montana State House of Representatives
P.O. Box 200400
Helena, Montana 59620

Chairman Royal Johnson
Senate Energy and Telecommunications Committee
Montana State Senate
P.O. Box 200500
Helena, Montana 59620

Dear Chairmen:

I am pleased to report that the Public Service Commission-facilitated collaborative has successfully completed its work, and the Commission unanimously voted to forward the bill, LC 1019, along with the following statement:

"This bill is a product of a collaborative process facilitated by the Public Service Commission. The Commission and its technical staff participated in the development of the bill. We forward it to the Legislature for consideration and action. This draft is intended to support the following goals:

- Preserve and enhance retail choice opportunities for all Northwestern Energy customers.
- Avoid cost shifting.
- Obtain low cost and stable default supply service.
- Enhance the default supplier's ability to enter long-term contracts."

We very much appreciate your leadership and hard work on this matter. We look forward to continuing to work with you and the Members of the Committee.

Sincerely,

Bob Rowe
Chairman

cc: Committee Members

Montana House of Representatives
Visitors Register

FEDERAL RELATIONS, ENERGY & TELECOMMUNICATIONS COMMITTEE **Date** 1/27/03

Bill No. HB 373 **Sponsor(s)** Rep Olson

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Larry Kraly	Self		X	
Corine Charter	Bull MT Landowners		X	
Ellen Kuster	Northern Plains RC		X	
Doug McLaf	Myself		✓	
Steve Welch	MT DEQ			✓
Dave Simpson	MT Coal Council / WCA Coal	✓		
Pat Campbell	Local 400	✓		
Jeff Barber	MEIC		✓	
Jim Mockler	MT Coal Council	✓		
William Duffield	MT Assoc Oil, Gas + Coal Counties	✓		
DANIEL WATSON	ROSEBUD COUNTY	✓		
Cody Ferguson	Nicle Golden Ranches, Forsyth		✓	
TOM HARRISON	Spring Creek Coal	✓		
Steve Gilbert	Self		X	
Dana Cotter	WETA	✓		
Anna Sanderson	HD 7			✓
Janet Ellis	MT Audubon		X	
K. Valoris	Environmental Rangers		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROD BITNEY**, on February 10, 2003 at 3:15 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Eileen J. Carney (D)
Rep. Tim Dowell (D)
Rep. Hal Jacobson (D)
Rep. Scott Mendenhall (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)
Rep. Jim Shockley (R)

Members Excused: Rep. Daniel Fuchs (R)
Rep. Jeff Laszloffy (R)

Note: Rep. Tim Dowell left during executive action.

Members Absent: None.

Staff Present: Glenna McClure, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 509, 2/7/2003
Executive Action: HB 337; HB 373; HB 417; HB 131

EXHIBIT(feh29a12)

Discussion:

REP. DOWELL said that he met with the house movers and the utility companies to develop the amendments. There were areas that were not agreed upon, but he said that he felt they were fair. He went over the specifics of the amendments.

Mary Vandenbosch indicated that the amendment actually is the entire bill.

There was some discussion on the height of the lines.

Vote: Motion carried 12-2 with REPRESENTATIVES BROWN and FUCHS voting no.

Discussion:

REP. BROWN proposed a conceptual change to the amendments to raise the height to 35 feet from 23 feet.

REP. SHOCKLEY asked a member of the house moving industry what percentage of his moves are affected by the 23 foot height.

Mr. Tamietti said that 23 feet is just where their moves start. Most lines are lower than 23 feet.

Motion/Vote: REP. BROWN moved that **CONCEPTUAL AMENDMENT TO HB 337 DO PASS. Motion failed 2-10 with REPRESENTATIVES BROWN AND SHOCKLEY voting aye** by roll call vote. REPRESENTATIVES LASZLOFFY AND RICE were absent for this vote.

Motion/Vote: REP. DOWELL moved that **HB 337 DO PASS AS AMENDED. Motion carried 11-1 with REPRESENTATIVE BROWN voting no.** REPRESENTATIVES LASZLOFFY AND RICE were absent for this vote.

EXECUTIVE ACTION ON HB 373

{Tape: 3; Side: A; Approx. Time Counter: 7.7 - Tape: 3; Side: B; 9.8}

Motion: REP. OLSON moved that **HB 373 DO PASS.**

Motion/Vote: **REP. OLSON** moved that **HB 373 BE AMENDED. Motion carried unanimously.** REPRESENTATIVES DOWELL, LASZLOFFY, AND RICE voted by proxy.

EXHIBIT(feh29a13)

Motion: **REP. PARKER** moved that **HB 373 BE AMENDED.**

EXHIBIT(feh29a14)

Discussion:

There was discussion and the committee decided to vote on separate parts of this amendment. These amendments failed as follows:

Vote: **Numbers 1 and 3 failed 5-9 with REPRESENTATIVES CARNEY, DOWELL, JACOBSON, PARKER, and RYAN voting aye by roll call vote. REPRESENTATIVES DOWELL, LASZLOFFY, AND RICE voted by proxy.**

Vote: **Numbers 2 and 4 failed 6-8 with REPRESENTATIVES CARNEY, DOWELL, JACOBSON, PARKER, RYAN, and SHOCKLEY voting aye by roll call vote. REPRESENTATIVES DOWELL, LASZLOFFY AND RICE voted by proxy.**

Motion/Vote: **Rep. Olson** moved that **HB 373 DO PASS AS AMENDED** (EXHIBIT 13). **Motion carried 9-5 with REPRESENTATIVES CARNEY, DOWELL, JACOBSON, PARKER, and SHOCKLEY voting no. REPRESENTATIVES DOWELL, LASZLOFFY AND RICE voted by proxy.**

EXECUTIVE ACTION ON HB 417

{Tape: 3; Side: B; Approx. Time Counter: 9.8 - 18.8}

Motion: **REP. OLSON** moved that **HB 417 DO PASS.**

Motion/Vote: **REP. BITNEY** moved that **HB 417 BE AMENDED. Motion carried unanimously.**

EXHIBIT(feh29a15)

Motion/Vote: **REP. OLSON** moved that **HB 417 BE AMENDED. Motion carried unanimously.**

HOUSE OF REPRESENTATIVES
Roll Call
FEDERAL RELATIONS, ENERGY & TELECOMMUNICATIONS COMMITTEE

DATE 2/10/03

NAME	PRESENT	ABSENT	EXCUSED
REP. ROD BITNEY, CHAIRMAN	✓		
REP. ALAN OLSON, VICE CHAIR MAJORITY	✓		
REP. GARY MATTHEWS, VICE CHAIR MINORITY	✓		
REP. DEE BROWN	✓		
REP. EILEEN CARNEY	✓		
REP. TIM DOWELL	✓		
REP. DAN FUCHS		✓ →	
REP. HAL JACOBSON	✓		
REP. JEFF LASZLOFFY		✓ →	
REP. SCOTT MENDENHALL	✓		
REP. JOHN PARKER	✓		
REP. DIANE RICE	✓		
REP. BRENNAN RYAN	✓		
REP. JIM SHOCKLEY	✓		

HOUSE OF REPRESENTATIVES

Roll Call Vote

FEDERAL RELATIONS, ENERGY & TELECOMMUNICATIONS COMMITTEE

DATE 2/10/03 BILL NO 373 MOTION NO. _____

MOTION: Amendment #HB037303.amv Numbers 1 & 3 of Amendment

NAME	AYE	NO	ABSENTEE
REP. ROD BITNEY, CHAIRMAN		✓	
REP. ALAN OLSON, VICE CHAIR MAJORITY		✓	
REP. GARY MATTHEWS, VICE CHAIR MINORITY		✓	
REP. DEE BROWN		✓	
REP. EILEEN CARNEY	✓		
REP. TIM DOWELL	✓ proxy		
REP. DAN FUCHS		✓	
REP. HAL JACOBSON	✓		
REP. JEFF LASZLOFFY		✓ proxy	
REP. SCOTT MENDENHALL		✓	
REP. JOHN PARKER	✓		
REP. DIANE RICE		✓ proxy	
REP. BRENNAN RYAN	✓		
REP. JIM SHOCKLEY		✓	

5 9

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HOUSE OF REPRESENTATIVES
Roll Call Vote
FEDERAL RELATIONS, ENERGY & TELECOMMUNICATIONS COMMITTEE

DATE 2/10/03 BILL NO 373 MOTION NO. _____
MOTION: Amend. 2/4 (373) HB037303.amv #'s 2 & 4 of amendment.

NAME	AYE	NO	ABSENTEE
REP. ROD BITNEY, CHAIRMAN		✓	
REP. ALAN OLSON, VICE CHAIR MAJORITY		✓	
REP. GARY MATTHEWS, VICE CHAIR MINORITY		✓	
REP. DEE BROWN		✓	
REP. EILEEN CARNEY	✓		
REP. TIM DOWELL	✓ Proxy		
REP. DAN FUCHS		✓	
REP. HAL JACOBSON	✓		
REP. JEFF LASZLOFFY		✓ Proxy	
REP. SCOTT MENDENHALL		✓	
REP. JOHN PARKER	✓		
REP. DIANE RICE		✓ Proxy	
REP. BRENNAN RYAN	✓		
REP. JIM SHOCKLEY	✓		
	6	8	

COMMITTEE ABSENTEE BALLOT

DATE: 2.10.03

I hereby authorize Rep. Fuchs
to cast my vote(s) as follows:

HB 131 - Aye
HB 373 - Aye
HB 417 - Aye

Representative Diane Rice

S:\ABSENTEE BALLOT2003.wpd

COMMITTEE ABSENTEE BALLOT

DATE: 2·10·03

I hereby authorize Rep. Fuchs
to cast my vote(s) as follows:

HB 131 - Aye
HB 373 - Aye
HB 417 - Aye

Representative Jeff Zaffirini

S:\ABSENTEE BALLOT2003.wpd

COMMITTEE ABSENTEE BALLOT

DATE: 2·10·03

I hereby authorize Rep.
to cast my vote(s) as follows:

Representative Pat Fitzpatrick

S:\ABSENTEE BALLOT2003.wpd

EXHIBIT 13
DATE 2/10/03
HB 373

Amendments to House Bill No. 373
1st Reading Copy

Requested by Representative Alan Olson

For the House Federal Relations, Energy, and Telecommunications Committee

Prepared by Mary Vandenbosch
February 10, 2003 (1:33pm)

1. Page 2, line 22.
Following: "vegetation"
Insert: "composition"

2. Page 3, line 26.
Following: "area;"
Insert: "and"

3. Page 3, line 27 through line 29.
Strike: subsection (d) in its entirety
Renumber: subsequent subsection

4. Page 6, line 18.
Following: "recreation,"
Insert: "or"
Following: "residential"
Strike: "," through "land"

5. Page 8, line 8.
Following: "~~department~~"
Insert: "under a plan approved by the department"

6. Page 9, line 9.
Strike: "a purchaser" through "or"
Insert: "a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;"

7. Page 9, line 10.
Following: "surface"
Insert: "; or
(d) the appropriate federal land management agency when the United States government owns the surface"

8. Page 9, line 18 through line 21.
Strike: subsection (53) in its entirety
Renumber: subsequent subsections

9. Page 22, line 1.
Following: "(1)"
Insert: "(a)"

10. Page 22, line 7.
Strike: "(a)"
Insert: "(i)"
Renumber: subsequent subsections

11. Page 22, line 8.
Following: "order to"
Insert: "enhance the postmining land use and"

12. Page 22, line 9.
Following: "stability,"
Insert: "and"

13. Page 22, line 10.
Following: "erosion"
Strike: "," through "uses"

14. Page 22.
Following: line 15
Insert: "(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved."

15. Page 22, line 16.
Strike: "(e)"
Insert: "(c)"

16. Page 25, line 28 through line 30.
Following: "(8)"
Insert: "(a)"
Strike: "and" on line 28 through "use" on line 30
Insert: "a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the

landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it"

17. Page 26, line 1.
Strike: "(a)"
Insert: "(i)"
Renumber: subsequent subsections

18. Page 26, line 5.
Strike: "(i)"
Insert: "(A)"
Renumber: subsequent subsections

19. Page 26.
Following: line 25
Insert: "(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete."

20. Page 29, line 11.
Following: "cover"
Insert: "and production"

- END -

EXHIBIT 14
DATE 2/10/03
HB 373

Amendments to House Bill No. 373
1st Reading Copy

Requested by Representative John Parker

For the House Federal Relations, Energy, and Telecommunications Committee

Prepared by Mary Vandenbosch
February 10, 2003 (2:50pm)

1. Page 5, line 24 through line 25.
Strike: "that" on line 24 through "uses" on line 25
Insert: "that are approved pursuant to 82-4-232"

2. Page 21, line 2.
Following: "intermittent"
Strike: "streams"
Following: "perennial streams"
Insert: "and ephemeral drainage ways"

3. Page 26.
Following: line 25
Insert: "(d) Specific plans have been submitted that:

(i) show the feasibility of the alternate land use as related to needs, projected land use trends, and markets; and

(ii) include a schedule showing how the alternate land use will be developed and achieved within a reasonable time after mining and how the alternate land use will be sustained.

(e) Provision of any necessary public facilities in a manner compatible with the operator's plans is assured, as evidenced by letters of commitment from parties other than the operator, as appropriate.

(f) Specific and feasible plans for financing attainment and maintenance of the alternate land use have been submitted. If the postmining land use is to be developed by a party other than the operator, the plans must include letters of commitment from the party.

(g) Approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the department of fish, wildlife, and parks and appropriate federal fish and wildlife management agencies."

4. Page 29, line 7.
Strike: "Standards" through "are"
Insert: "The board shall adopt rules that include standards for success and statistically valid sampling techniques for measuring success. The rules must include the following standards"

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Federal Relations, Energy, and Telecommunications** recommend that **House Bill 373** (first reading copy -- white) **do pass as amended.**

Signed: Rod Bitney
Representative Rod Bitney, Chair

And, that such amendments read:

1. Page 2, line 22.
Following: "vegetation"
Insert: "composition"

2. Page 3, line 26.
Following: "area;"
Insert: "and"

3. Page 3, line 27 through line 29.
Strike: subsection (d) in its entirety
Renumber: subsequent subsection

4. Page 6, line 18.
Following: "recreation,"
Insert: "or"
Following: "residential"
Strike: "," through "land"

5. Page 8, line 8.
Following: "~~department~~"
Insert: "under a plan approved by the department"

6. Page 9, line 9.

M. Peterson
2/11 9 am

Committee Vote:
Yes 9, No 5.

Strike: "a purchaser" through "or"
Insert: "a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;"

7. Page 9, line 10.
Following: "surface"
Insert: "; or
(d) the appropriate federal land management agency when the United States government owns the surface"

8. Page 9, line 18 through line 21.
Strike: subsection (53) in its entirety
Renumber: subsequent subsections

9. Page 22, line 1.
Following: "(1)"
Insert: "(a)"

10. Page 22, line 7.
Strike: "(a)"
Insert: "(i)"
Renumber: subsequent subsections

11. Page 22, line 8.
Following: "order to"
Insert: "enhance the postmining land use and"

12. Page 22, line 9.
Following: "stability,"
Insert: "and"

13. Page 22, line 10.
Following: "erosion"
Strike: ", " through "uses"

14. Page 22.
Following: line 15
Insert: "(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box

cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved."

15. Page 22, line 16.
Strike: "(e)"
Insert: "(c)"

16. Page 25, line 28 through line 30.
Following: "(8)"
Insert: "(a)"
Strike: "and" on line 28 through "use" on line 30
Insert: "a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it"

17. Page 26, line 1.
Strike: "(a)"
Insert: "(i)"
Renumber: subsequent subsections

18. Page 26, line 5.
Strike: "(i)"
Insert: "(A)"
Renumber: subsequent subsections

19. Page 26.
Following: line 25
Insert: "(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete."

20. Page 29, line 11.
Following: "cover"
Insert: "and production"

- END -

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 17, 2003 at 3:20 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bill Tash, Chairman (R)
Sen. Aubyn Curtiss, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Gregory D. Barkus (R)
Sen. Jon Ellingson (D)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Debbie Shea (D)
Sen. Ken Toole (D)

Members Excused: Sen. Dan McGee (R)

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Roberta Opel, Committee Secretary

Video-taped Committee: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society.

Committee Business Summary:

Hearing & Date Posted:	HB 584, 3/17/2003, HB 467, 3/17/2003, HB 373, 3/17/2003
Executive Action:	HB 373, HB 437, HB 683, HB 443

Opponents' Testimony:

3:55pm Stuart Levit, American Wildlands
EXHIBIT(nas56a05) and **EXHIBIT(nas56a06)**
4:06pm John Wilson, MT. Trout Unlimited **EXHIBIT(nas56a07)**
4:15pm Robin Cunningham, Fishing Outfitter's Association of MT.
4:16pm Sherm Janke, on behalf of the MT. Chapter of the Sierra Club
4:17pm Candace Durran, representing herself

Questions from Committee Members and Responses:

4:18pm Begin
4:43pm End
25 min Elapsed time

Closing by Sponsor:

4:43pm **REP. BARRETT** closed the hearing on HB 467.

HEARING ON HB 373

Opening Statement by Sponsor: **REP. ALAN OLSON, HD 8,** opened the hearing on HB 373; revise the strip and underground mine reclamation act.

Proponents' Testimony:

4:51pm Dave Simpson, MT. Coal Council **EXHIBIT(nas56a08)**
4:53pm Hugh Broadus, rancher, Rosebud Valley
5:03pm Jim Mockler, MT. Coal Council
5:05pm Bob Pavlovich, IPEW 233
5:05pm Don Allen, WETA
5:02pm Tom Figarelle, representing Forward, MT.

Opponents' Testimony:

5:07pm Ellen Pfister, on behalf of Northern Plains Resource Council (NPRC) **EXHIBIT(nas56a09)** and **EXHIBIT(nas56a10)**
5:12pm Jeff Barber, MEIC
5:20pm Gene Fenderson, MT. Progressive Labor Caucus
5:21pm Don Judge, representing MT. Chapter of the Sierra Club

Informational Testimony and Witnesses:

5:25pm Jan Sensibaugh, Director, MT. Dept. of EQC
5:45pm John North, Chief Legal Council, Dept. of EQC

Questions from Committee Members and Responses:

5:26pm Begin
5:51pm End
25 min Elapsed time

Closing by Sponsor:

5:52pm **SEN. OLSON** closed the hearing on HB 373. **EXHIBIT(nas56a11)**

EXECUTIVE ACTION ON HB 373

Motion: **SEN. RICK LAIBLE** moved **HB 373 BE CONCURRED IN. Motion carried 10-2 with SENATORS JON ELLINGSON AND KEN TOOLE voting no.**

Discussion:

5:57pm Begin
5:58pm End
1 min Elapsed time

EXECUTIVE ACTION ON HB 437

Motion: Motion by **SEN. BEA MCCARTHY** moved **HB 437 BE CONCURRED IN and moved AMENDMENT HB043706.akl. EXHIBIT(nas56a12)**

Discussion:

6:00pm Begin
6:05pm End
5min Elapsed time

Vote: Motion by **SEN. MCCARTHY HB 437 BE CONCURRED IN carried unanimously.**

Motion: Motion by **SEN. DEBBIE SHEA to adopt AMENDMENT HB043705.akl EXHIBIT(nas56a13)**

Discussion:

6:11pm Begin
6:16pm End
5 min Elapsed time

Vote: Motion **carried 10-2 with SENATORS ELLINGSON and TOOLE voting no on AMENDMENT HB043705.**

SENATE
NATURAL RESOURCES COMMITTEE
ROLL CALL

DATE 3/17, 2003

MEMBER	ASSIGNMENT	PRESENT	ABSENT
Sen. Bill Tash	Chairman	✓	
Sen. Sherm Anderson	Member	✓	
Sen. Greg Barkus	Member	✓	
Sen. Jon Ellingson	Member	✓	
Sen. Rick Laible	Member	✓	
Sen. Bea McCarthy	Member	✓	
Sen. Dan McGee	Member	✓	
Sen. Gary Perry	Member	✓	
Sen. Glenn Roush	Member	✓	
Sen. Debbie Shea	Member	✓	
Sen. Ken Toole	Member	✓	
Sen. Aubyn Curtiss	Vice Chair	✓	

PROXY VOTE

I, THE UNDERSIGNED, HEREBY AUTHORIZE

SENATOR Todd Lee TO VOTE MY PROXY

ON ANY ISSUE BEFORE THE SENATE COMMITTEE

ON Nat. Res. MEETING HELD ON 3/17,

2003.

Jim Elliott

SENATOR

STATE OF MONTANA

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3/17/2003
BILL NO. HB 373

Before the Senate Natural Resources Committee
March 17, 2003
Re: HB 373

Testimony of David W. Simpson

Mr. Chairman and members of the Committee, my name is Dave Simpson. Currently, I am President of the Montana Coal Council, and in that capacity I have been directly involved in the crafting of House Bill 373 to revise the Montana Strip and Underground Mine Reclamation Act. I reside in Hardin, Montana, where I have lived since 1975, when I joined Westmoreland Resources, Inc., as Environmental Manager. My current title with Westmoreland Coal Company is Vice President, Regulatory Affairs, and I am now based in Billings.

What does HB 373 do, and what does it not do?

HB 373 states a clear legislative policy that the goal of reclamation is re-establishment of land use comparable to pre-mining conditions, or higher or better uses, which is consistent with federal law. The present statement of findings and policy provides no such guidance.

HB 373 affirms that lands surface mined for coal are to be backfilled and regraded to approximate original contour appropriate for the post-mining land use. The essential elements of AOC are defined, while also defining the limits of flexibility to optimize construction of the reclaimed landscape. HB 373 does not allow a mining company to reclaim to a lower standard or avoid reclamation altogether.

HB 373 clarifies that protection of the hydrologic balance, projection of probable hydrologic consequences, and requirements for hydrologic monitoring must have a practical basis relative to uses of land and water. HB 373 does not relieve coal mining companies from complying with the Montana Clean Water Act and protecting water rights.

HB 373 provides clear requirements for revegetation appropriate for the approved post-mining land use, and a clear basis for objective standards for reclamation success based on vegetation establishment and attainment of land use objectives. HB 373 does not weaken reclamation standards; rather, it clarifies reclamation standards consistent with federal requirements.

HB 373 provides a mechanism for changes in land use with concurrence of the landowner, including a former landowner with an option to repurchase reclaimed lands after mining. HB 373 does not diminish the role or responsibility of MDEQ in reviewing and approving mining and reclamation plans to assure compliance with the Act and Rules.

Why has the Montana Coal Council put more than a year of effort, in consultation with MDEQ and the federal Office of Surface Mining (OSM), into developing HB 373?

Montana's coal strip mine reclamation act was first enacted in 1973. At the time, it was

ground-breaking legislation, requiring effective reclamation of lands surface mined for coal. In 1977, the federal Surface Mining Control and Reclamation Act (SMCRA) established uniform reclamation standards nation wide, to be administered by OSM and implemented and enforced through approved state programs. Since most coal mining states had at best minimal requirements for reclamation, adoption of federal standards was straightforward. But in Montana, where there was a pre-existing statute, the approach was to amend the statute only to the extent necessary to gain primacy. The result was a regulatory program that in some ways is quite different from what was contemplated by SMCRA, and from regulatory programs in other states.

Today, nearly thirty years later, we are in a position to evaluate the Montana regulatory program. The following is quoted from the 2001 OSM Annual Evaluation Summary Report for the Montana Title V Reclamation Program:

> OSM evaluates the effectiveness of the State program based on the number of acres that have received bond release. Several factors combine to result in the low number of acres released from bond including: Bond release applications have been a lower priority (by both industry and Montana) than has mining, backfilling, grading, soiling and seeding activities. Many areas have been reclaimed beyond the minimum period of responsibility as specified by the Montana program, however, industry has been reluctant to apply for bond release. As a result, less than 15 percent of the disturbed lands have received Phase I and II release and no lands have received Phase III final release. Based on these numbers and the guidance from REG. 8, the CFO (Casper Field Office) believes that **the Montana program is not effective in having all disturbed lands reclaimed to the approved postmining land use** contemporaneously (emphasis added).

In fact, through June 30, 2002, more than 13,100 acres of lands mined for coal in Montana had been reclaimed. More than 5,900 acres have been reclaimed for more than the 10-year responsibility period, and are successfully reclaimed by any reasonable standard. Much of this acreage has been grazed successfully for many years. So why is industry reluctant to apply for final bond release?

I have worked with the Montana program for more than 27 years, and I have given a great deal of thought to this question. In its administration of the reclamation program, the Department of Environmental Quality (DEQ) staff is mired in detail driven by its interpretation of the present statute, that is, that in order to be successful, reclamation must restore the "ecological function." This may be a noble goal, but I defy anyone to tell me what it means in quantitative terms. It is this same perspective that results in a process requiring four years or longer to review an application for a mining permit, when in other states a permit can be obtained in 18 months or less. Given the experience with permit applications, the coal industry is reluctant to apply for bond release because the standards for success defy definition and quantification.

It is often said that before devising a solution, it is best to first identify the problem. The Montana reclamation statute has been effective in requiring reclamation of disturbed lands and minimizing the environmental impacts of surface coal mining. But the problem at

hand is that it is seriously flawed with respect to establishing a goal and standards for reclamation success. This has become obvious as coal mining companies are now contemplating bond release. HB 373 corrects this problem by providing a clear statement of legislative intent that the goal of reclamation is the establishment of land use comparable to pre-mining conditions, or higher or better uses. It incorporates language from the OSM regulations to implement this goal and establish standards for success consistent with OSM requirements.

Bond release is a critical issue for coal companies operating in Montana and across the country. In order to obtain a permit, a mining company must post a bond sufficient to cover the cost of reclaiming the mine. For many years, reclamation bonds were cheap and easy to obtain. Mine operators as well as regulatory agencies took the availability of bonds for granted, and the bonding companies paid little attention as long as the premiums were paid. But recent events, particularly difficulties in the insurance industry resulting from languishing financial markets, have created a crisis in the bonding industry. Premiums have increased several fold, from $1.50 per thousand as recently as three years ago to as much as $12.50 today. For a company like Westmoreland Coal Company with more than $150 million in bonds, the increase in premiums alone has a serious financial impact. But bonding companies are not seeing releases, and they are beginning to reassess their risks. Consequently, reclamation bonds can be very difficult to buy at any price.

Coal companies must be able to obtain bonds in order to get permits, and in order to continue obtaining bonds, we must be able to demonstrate through bond releases that we are meeting our obligations under our permits, which we are doing on the ground. It is imperative that release of reclamation bonds becomes a reality in Montana, so that current operators can maintain their permits, and particularly if there is to be development of new coal mines. OSM has placed a priority on bond releases to demonstrate success of the regulatory program under SMCRA. HB 373, by establishing definitive standards for reclamation success based on land use criteria consistent with federal requirements, will enable mining companies to proceed with applications for bond release with a clear understanding of what is expected. Such definitive standards will also bring much greater efficiency to administration of the regulatory program by DEQ.

HB 373 has been carefully crafted to make the language as clear as possible, and maintain compliance with OSM standards for state programs. Based on a technical review, OSM has advised that HB 373 as amended meets federal requirements. It is a complex bill with many interrelated provisions. I would be pleased to answer any questions.

SENATE NATURAL RESOURCES
EXHIBIT NO.
DATE 3/7/2003
BILL NO. HB 373

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE JOHN PARKER
HOUSE DISTRICT 45

HELENA ADDRESS:
PO BOX 200400
HELENA, MONTANA 59620-0400
PHONE: (406) 444-4800

HOME ADDRESS:
PO BOX 558
GREAT FALLS, MONTANA 59403
PHONE: (406) 868-3695

COMMITTEES:
JUDICIARY
FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

January 30, 2003

Mr. Steve Welch
Montana Department of Environmental Quality

Dear Mr. Welch:

I am writing to obtain additional information regarding House Bill 373. I left the hearing unsure about the Department's continued ability to fully regulate coal mine reclamation should this bill be enacted into law in its present form. During the hearing, I asked whether the bill preserved authority for DEQ to continue regulating reclamation as it currently does, and was told that it did.

My subsequent review of the bill causes me to question that response. It seems that under the language of the bill, a coal mine operator would be able to dictate to the Department not only what the post-mining land use would be, but also the standards under which that land use would be achieved. I have yet to find language that grants the Department the independent authority it currently enjoys for making those determinations.

I respectfully request information from you demonstrating how DEQ would retain its present level of enforcement authority if House Bill 373 were enacted. I have to believe that our courts would interpret these changes as a legislative mandate reducing DEQ's enforcement powers.

Thank you for your attention to this request. I look forward to reviewing your response.

Sincerely,

John Parker
Rep. John Parker

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BY
OK Leszlaffy

would be or were developed in accordance with current requirements. In those cases, DEQ would regulate them pursuant to those standards and requirements.

To summarize, DEQ would continue to have approval authority and regulatory responsibility over permitting and reclamation in these areas of concern, whether with the new or current standards. However, HB 373 would reduce the current restrictions on postmining land use selections and would specify more precisely the standards and requirements for permitting and reclamation in the above areas.

I would be happy to discuss any of this or answer further questions if you have them. Thank you for getting in touch.

Sincerely,

Steve Welch, Division Administrator
Permitting and Compliance Division
Phone: (406) 444-4964
E-mail: swelch@state.mt.us

c: Neil Harrington, Bureau Chief, Industrial and Energy Minerals Bureau

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 3/7/03
BILL NO. HB 373

NORTHERN PLAINS
RESOURCE COUNCIL

HB 373: Amending the Montana Strip and Underground Mine Reclamation Law

BACKGROUND:
In the 1970's, Northern Plains brought people from across Montana together to pass a reclamation law that effectively balances our need to protect the environment with our need to develop Montana's coal resources. The Montana Strip and Underground Mine and Reclamation Law has served Montana well, providing benefits to people across the state.

WHAT HB 373 WOULD DO:
HB 373 would weaken the Montana Strip and Underground Mine and Reclamation Law. The proposed amendments would shift the focus of the law from the protection and restoration of land and vegetation, to an emphasis on ensuring the release of the operator's bond. This bill would change vegetation standards, the definition of 'approximate original contour,' and would allow changes to be made to operating permits before the effective date of the law.

- Current law requires that land disturbed by coal mining be reclaimed with native plants that can sustain into the future. Under HB 373, vegetation would not have to be native, diverse, or self-sustaining. This is despite a documented history of non-native plant species failing to thrive and to provide comparable cover to native plants.
- Current law requires that disturbed land be reclaimed to the "approximate original contour" of the land, to ensure protection of drainages and waterways. HB 373 would change the definition of 'approximate original contour' to allow haphazard restructuring of the land, and lift requirements that reclamation be done by qualified engineers with sufficient government oversight.
- HB 373 would allow current operators to revise their reclamation proposals before the bill becomes effective, grand-fathering in irresponsible development.
- Current law requires that disturbed land be restored to its original character or better. HB 373 would remove this requirement, and would allow restoration to occur according to the whim of the developer or surface owner.
- Current reclamation requirements generate economic activity by creating good-paying jobs for Montana. With HB 373, fewer skilled workers would be needed since reclamation of the land would not be held to a high standard. Native seed sellers would be hurt by the lack of businesses due to a downturn in the need to buy large quantities of native seed.

HB 373 is an attempt by one coal company to address it's inability to meet current reclamation requirements that are routinely met other coal mining companies. Montana's coal reclamation laws have effectively ensured responsible coal development in this state for over two decades.

Vote against 373!

2401 Montana Avenue, Suite 200, Billings, MT 59101
Tel: 406.248.1154 Fax: 406.248.2110 Email: info@northernplains.org www.northernplains.org

DATE MARCH 17, 2003

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: HB 373 ~ HB 467
HB 584 ~ HB 673

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Stu Levit	586 8175	American Wildlands	467		X
Peggy Trenk	443-4032	MT. Assoc of Realtors	467	X	
Ellen Rister	248-1154	Northern Plains Res. Co.	373		X
GENE FENDERSON	———	PROGRESSIVE LABOR CAUCUS	373		X
Sandi Olsen	444-3006	DEQ	584	X	
Robert Farnsworth	782-4507	FBR W 233	SB 373	X	
Neil Harrington	444-4973	DEQ	HB 373		
Janet Ellis	443-3949	MT Audubon	HB 467		X
Robert Throssell	459-6865	MT Wildlife Federation	HB467		X
ROBIN CUNNINGHAM	763-5436	FISHING OUTFITTERS ASSN. OF MONTANA	HB 467		X
Amie Grmoljez	993.6820	BNSF	584	X	
Nancy Schlepp		MT Farm Bureau	467	X	
Dave Simpson	7692501	Westmoreland Coal Co	HB373	X	
Don Allen	443-5591	WETA	373 467	X X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Jon Metropoulos	2-8560	MWRA	467	X
Ellen Engstedt	442-1526	MT Wood Products	467	X

DATE MARCH 17, 2003

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: HB 373 – HB 467
HB 584 – HB 673

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Byron Roberts	442-4479	MT Building Ind Assn.	467	✓	
John Watson	443-2884	MT Trout Unlimited	467		X
Jim Mockler	656-6593	MT Coal Council	373	✓	
EVELYN BROADUS	477-6646	Rancher	373	✓	
Hugh BROADUS	477-6646	Rancher	373	✓	
Daniel Watson	346-2251	ROSEBUD COUNTY	373	✓	
ALK ABERCROMBIE	442-7582	MT Petroleum Assn	467	✓	
William Duffield	939-9443	MACDC Counties	373	X	
Angela Janacaro	495 1444	MT Mining Assn	584	X	
Jeff Barber	443-2520	MEIC	373 467		X
Anne Hedges	443-2520	MEIC	584	X	
SHERM JANKE	587-9782	SIERRA CLUB	467		X
M. S. KIRCK	457-0570	WETA	467	✓	
Candace Durran	443-4089	self	373		✓
Don Judge	442-2968	MT chapter, Sierra Club	HB 373		✓
Candace Durran	443-4089	self	467		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Natural Resources** recommend that **House Bill 373** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Bill Tash, Chair

To be carried by Senator Kelly Gebhardt

- END -

Committee Vote:
Yes 10, No 2.

570926SC.sjo

2003 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 373

INTRODUCED BY A. OLSON, BALES, BALLANTYNE, BRUEGGEMAN, E. CLARK, DEVLIN, FORRESTER, GEBHARDT, GILLAN, KEANE, LANGE, MAEDJE, MANGAN, MATTHEWS, MCGEE, MCNUTT, MENDENHALL, B. OLSON, PETERSON, RIPLEY, ROME, B. RYAN, SINRUD, STORY, ZOOK, ROBERTS, LENHART

AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION LAWS; CLARIFYING THE POLICY AND FINDINGS; CLARIFYING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO APPROVE OR DISAPPROVE MINOR REVISIONS; MODIFYING PERMIT APPLICATION REQUIREMENTS; CLARIFYING HYDROLOGIC BALANCE RECLAMATION REQUIREMENTS; MODIFYING AREA MINING REQUIREMENTS; MODIFYING THE REQUIREMENTS FOR PLANTING VEGETATION FOLLOWING GRADING OF A DISTURBED AREA; PROVIDING STANDARDS FOR SUCCESSFUL REVEGETATION; CLARIFYING THAT VEGETATION THAT IS PLACED OR SEEDED BECOMES THE PROPERTY OF THE LANDOWNER AFTER THE BOND IS RELEASED; ALLOWING REVISION OF PERMIT AND RECLAMATION PLAN APPLICATIONS IN ORDER TO INCORPORATE THE PROVISIONS OF THIS ACT; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-221, 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, 82-4-235, AND 82-4-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION LAWS; CLARIFYING THE POLICY AND FINDINGS; CLARIFYING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO APPROVE OR DISAPPROVE MINOR REVISIONS; MODIFYING PERMIT APPLICATION REQUIREMENTS; CLARIFYING HYDROLOGIC BALANCE RECLAMATION REQUIREMENTS; MODIFYING AREA MINING REQUIREMENTS; MODIFYING THE REQUIREMENTS FOR PLANTING VEGETATION FOLLOWING GRADING OF A DISTURBED AREA; PROVIDING STANDARDS FOR SUCCESSFUL REVEGETATION; CLARIFYING THAT VEGETATION THAT IS PLACED OR SEEDED BECOMES THE PROPERTY OF THE LANDOWNER AFTER THE BOND IS RELEASED; ALLOWING REVISION OF PERMIT AND RECLAMATION PLAN APPLICATIONS IN ORDER TO INCORPORATE THE PROVISIONS OF THIS ACT; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-221, 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, 82-4-235, AND 82-4-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-202, MCA, is amended to read:

"82-4-202. Policy -- findings. (1) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards ~~(~~especially as to reclamation of disturbed lands~~)~~, in order to achieve ~~the aforementioned~~ those objectives; and

(g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~ ensure the wise use of these resources and prevent the failure to conserve coal.

(2) The legislature ~~hereby~~ finds and declares that:

(a) in order to achieve the ~~aforementioned~~ policy objectives enumerated in subsection (1), promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ ensure a long-range dependable tax base, it is reasonably necessary to require~~, after March 16, 1973,~~ that all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted, that ~~no~~ a permit may not be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, that certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly appears in the remaining provisions of this part, and that the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part ~~be deemed to be~~ is an exercise of the authority granted in the Montana constitution~~, as adopted June 6, 1972,~~ and, in particular, a response to the mandate expressed in Article IX ~~thereof~~ of the constitution

and ~~also be deemed to be~~ that this part is also an exercise of the general police power to provide for the health and welfare of the people~~.~~;

(c) coal mining alters the character of soils and overburden materials and that duplication of premining topography, soils, and vegetation composition is not practicable;

(d) the standard for successful reclamation of lands mined for coal is the reestablishment of sustainable land use comparable to premining conditions or to higher or better uses; and

(e) standards for successful reclamation must be well-defined, consistent, and attainable so that mine operators can reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved."

Section 2. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

~~(2)~~(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion~~,~~ and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an

unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

~~(3)~~(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

~~(4)~~(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

~~(5)~~(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

~~(6)~~(8) "Board" means the board of environmental review provided for in 2-15-3502.

~~(7)~~(9) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(8)~~(10) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(9)~~(11) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal

processing and other waste disposal areas.

~~(10)~~(12) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance ~~is~~ are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(13) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(11)~~(14) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(12)~~(15) "Department" means the department of environmental quality provided for in 2-15-3501.

(16) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(17) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(13)~~(18) "Failure to conserve coal" means the nonremoval or ~~nonutilization~~ nonuse of minable and marketable coal by an operation. However, the nonremoval or ~~nonutilization~~ nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(14)~~(19) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(20) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(21) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(22) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(23) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(24) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in

ground water and surface water storage as they relate to uses of land and water within the area affected by mining and the adjacent area.

~~(15)~~(25) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(26) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(27) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(28) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

~~(16)~~(29) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(30) "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

~~(17)~~(31) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(18)~~(32) "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(19)~~(33) "Mineral" means coal and uranium.

~~(20)~~(34) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(21)~~(35) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

~~(22)~~(36) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(37) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(38) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(23)~~(39) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(24)~~(40) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(25)~~(41) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(26)~~(42) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work ~~to restore an area of land~~ conducted on lands affected by strip mining or underground mining ~~under a plan approved by the department~~ under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

(43) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less-intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

(44) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(27)~~(45) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(46) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(47) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(28)~~(48) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(29)~~(49) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(30)~~(50) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface ~~and whose principal place of residence is~~

~~on the land~~;

(b) ~~a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or~~ a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

~~(31)~~(51) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(32)~~(52) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

~~(33)~~(53) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(34)~~(54) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(55) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(35)~~(56) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 3. Section 82-4-221, MCA, is amended to read:

"82-4-221. Mining permit required. (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at the time the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of each permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person must be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision must be approved or disapproved within a reasonable time, depending on the scope and complexity, but ~~in no case longer than 120 days~~ within 60 days, which may be extended by an additional 30 days by mutual agreement of the department and the applicant. Applications for major revisions are subject to all the permit application requirements and procedures."

Section 4. Section 82-4-222, MCA, is amended to read:

"82-4-222. Permit application. (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and ~~state~~ provide:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or ~~his~~ the applicant's agent has

conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of ~~his~~ the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area;

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

~~(n)~~(q) a coal conservation plan; and

~~(o)~~(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by two copies of all maps meeting the requirements of subsections (2)(a) through ~~(2)(n)~~ (2)(q). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of

owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which

proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy~~,~~ or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of ~~his~~ the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur."

Section 5. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice,

and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part ~~no~~ not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the

department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in ~~associated offsite~~ adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; ~~and~~

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

~~(vii)~~(viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area."

Section 6. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required -- bond -- alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. ~~All highwalls must be reduced and the steepest slope of the reduced highwall may be no greater than 20 degrees from the horizontal. Highwall reduction must be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading must eliminate all highwalls and spoil peaks.~~ The area of land affected must be ~~restored~~ backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by board rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff. ~~Additional restoration work may be required by the department according to rules adopted by the board.~~

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if ~~no~~ a public hearing is not held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days after the hearing.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the bond or deposit has been accomplished as required by this part

according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. ~~No~~ Any part of the bond or deposit may not be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. The

date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for the hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

~~(7)~~(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

(i) There is a reasonable likelihood for achievement of the alternate land use.

(ii) The alternate land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The alternate land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law. ~~alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans must be submitted to the department, and after consultation with the landowner, if the plans are approved by the department and complied with within the time limits determined by the department as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the department. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice~~

~~requirement of 82-4-222(1)(l).~~

~~(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be used and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation at a minimum to:~~

~~(a) restore the land affected to a condition capable of supporting the use that it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not determined to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and~~

~~(b) prevent soil erosion to the extent achieved prior to mining.~~

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Section 7. Section 82-4-233, MCA, is amended to read:

"82-4-233. Planting of vegetation following grading of disturbed area. (1) ~~Except as provided in subsection (4), after the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant the legumes, grasses, shrubs, and trees that are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:~~

~~(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;~~

~~(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and~~

~~(c) preventing soil erosion to the extent achieved prior to the operation.~~ The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(a) diverse, effective, and permanent;

(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;

(c) at least equal in extent of cover to the natural vegetation of the area; and

(d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.

(2) ~~The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover must be defined by rules of the board.~~ The reestablished plant species must:

(a) be compatible with the approved postmining land use;

(b) have the same seasonal growth characteristics as the original vegetation;

(c) be capable of self-regeneration and plant succession;

(d) be compatible with the plant and animal species of the area; and

(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.

(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:

(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;

(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates.

~~(3)~~(4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).

~~(4)~~(5) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department ~~pursuant to subsection (2)~~ and on which the reclaimed vegetation otherwise meets the requirements of ~~subsection~~ subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."

Section 8. Section 82-4-234, MCA, is amended to read:

"82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by ~~his~~ the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans ~~shall~~ must be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. ~~A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233.~~"

Section 9. Section 82-4-235, MCA, is amended to read:

"82-4-235. ~~Inspection of vegetation~~ Determination of successful revegetation -- final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is diverse if multiple plant species meeting the requirements of 82-4-233(1)(b)

are present. The department may approve a lesser diversity standard for postmining land uses other than grazing land.

(e) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(f) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(g) plant species comprising the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area, are introduced species that have become naturalized, or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation ~~for permanent diverse~~ of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory ~~permanent diverse~~ vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

~~(2)~~(3) (a) Notwithstanding the provision in subsection ~~(1)~~ (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards

of ~~82-4-232(8)~~ 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection ~~(2)(a)~~ (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection ~~(1)~~ (2)."

Section 10. Section 82-4-236, MCA, is amended to read:

"82-4-236. Vegetation as property of landowner. All ~~legumes, grasses, shrubs, and trees~~ vegetation ~~which are~~ that is planted or seeded on the area of land affected as required by this part or rules adopted under this part ~~become~~ becomes the property of the landowner after complete release of the bond, unless the operator and the landowner agree otherwise."

Section 11. Permit and reclamation plan application revisions. (1) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on [the effective date of this act], in order to incorporate the provisions of this part.

(2) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before [the effective date of this act]. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

Section 12. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 11].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Contingent voidness. (1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Section 16. Effective date. [This act] is effective January 1, 2004.

- END -

Latest Version of HB 373 *(HB0373.ENR)*

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